

CHAPTER 10

INTEREST, PENALTY, EXCEPTIONS TO PENALTY, AND JEOPARDY ASSESSMENTS

[Prior to 12/17/86, Revenue Department[730]]

Rules 701—10.20(421) to 701—10.111(422A) are excerpted from 701—Chs 12, 30, 44, 46, 52, 58, 63, 81, 86, 88, 89, 104, IAB 1/23/91

701—10.1(421) Definitions. As used in the rules contained herein, the following definitions apply unless the context otherwise requires:

10.1(1) “*Department*” means the Iowa department of revenue and finance.

10.1(2) “*Director*” means the director of the department or authorized representative.

10.1(3) “*Taxes*” means all taxes and charges arising under Title X of the Iowa Code, which include but are not limited to individual income, withholding, corporate income, franchise, sales, use, hotel/motel, railroad fuel, equipment car, replacement tax, statewide property tax, motor vehicle fuel, inheritance, estate and generation skipping transfer taxes and the environmental protection charge imposed upon petroleum diminution due and payable to the state of Iowa.

701—10.2(421) Interest. Except where a different rate of interest is provided by Title X of the Iowa Code, the rate of interest on interest-bearing taxes and interest-bearing refunds arising under Title X is fixed for each calendar year by the director. In addition to any penalty computed, there shall be added interest as provided by law from the original due date of the return. Any portion of the tax imposed by statute which has been erroneously refunded and is recoverable by the department shall bear interest as provided in Iowa Code section 421.7, subsection 2, from the date of payment of the refund, considering each fraction of a month as an entire month. Interest which is not judgment interest is not payable on sales and use tax, local option tax, and hotel and motel tax refunds. *Herman M. Brown v. Johnson*, 248 Iowa 1143, 82 N.W.2d 134 (1957); *United Telephone Co. v. Iowa Department of Revenue*, 365 N.W.2d 647 (Iowa 1985). However, interest which is not judgment interest accrues on such refunds on or after January 1, 1995, and is payable on sales and use tax, local option tax and hotel and motel tax refunds on or after January 1, 1995.

10.2(1) Calendar year 1982. The rate of interest upon all unpaid taxes which are due as of January 1, 1982, will be 17 percent per annum (1.4% per month). This interest rate will accrue on taxes which were due and unpaid as of, or after, January 1, 1982. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1982. This interest rate of 17 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1982.

EXAMPLES:

1. The taxpayer, X corporation, owes corporate income taxes assessed to it for the year 1975. The assessment was made by the department in 1977. On January 1, 1982, that assessment had not been paid. The rate of interest on the unpaid tax assessed has accrued at the rate of 9 percent per annum (0.75% per month) through December 31, 1981. Commencing on January 1, 1982, the rate of interest on the unpaid tax will thereafter accrue at the rate of 17 percent per annum for 1982 (1.4% per month). If the tax liability is not paid in 1982, the rate of interest will then accrue in 1983 in accordance with the rate fixed by the director as set forth in Iowa Code section 421.7.

2. The taxpayer, Y, owes retail sales taxes assessed to it for the audit period January 1, 1979, through December 31, 1982. The assessment is made on March 1, 1983. For the tax periods in which the tax became due prior to January 1, 1982, the interest rate on such unpaid sales taxes accrued at 9 percent per annum (0.75% per month). Commencing on January 1, 1982, the entire unpaid portion of the tax assessed which was delinquent at that time will begin to accrue interest at the rate of 17 percent per annum. Those portions of the tax assessed first becoming delinquent in 1982 will bear interest at the rate of 17 percent per annum (1.4% per month). In the event that any portion of the tax assessed remains unpaid on January 1, 1983, the rate of interest will then accrue in 1983 in accordance with the rate fixed by the director as set forth in Iowa Code section 421.7.

3. The taxpayer, Z, files a refund claim for 1978 individual income taxes in March 1982. The refund claim is allowed in May 1982, and is paid. Z is entitled to receive interest at the rate of 9 percent per annum (0.75% per month) upon the refunded tax accruing through December 31, 1981, and is entitled to interest at the rate of 17 percent per annum (1.4% per month) upon such tax from January 1, 1982, until the refund is paid.

4. A's 1981 individual income tax liability becomes delinquent on May 1, 1982. A owes interest, commencing on May 1, 1982, at the rate of 17 percent per annum (1.4% per month). In the event that A does not pay the liability in 1982, the rate of interest will then accrue in 1983 in accordance with the rate fixed by the director as set forth in Iowa Code section 421.7.

5. Decedent died December 15, 1976. The inheritance tax was due 12 months after death, or December 15, 1977. Prior to the due date, the estate was granted an extension of time, until September 1, 1978, to file the return and pay the tax due. The tax, however, was paid March 15, 1982. Interest accrues on the unpaid tax during the period of the extension of time (December 15, 1977, to September 1, 1978) at the rate of 6 percent per annum. Interest accrues on the delinquent tax from September 1, 1978, through December 31, 1981, at the rate of 8 percent per annum. Interest accrues on the delinquent tax from January 1, 1982, to the date of payment on March 15, 1982, at the rate of 17 percent per annum.

6. B files a refund for sales taxes paid for the periods January 1, 1979, through December 31, 1982, in March 1983. The refund is allowed in May 1983. Since no interest is payable on sales tax refunds, B is not entitled to any interest. *Herman M. Brown Co. v. Johnson*, 248 Iowa 1143 (1957). However, interest accrues and is payable on and after January 1, 1995.

The examples set forth in these rules are not meant to be all-inclusive. In addition, other rules set forth the precise circumstance when interest begins to accrue and whether interest accrues for each month or fraction of a month or annually as provided by law. Interest accrues as provided by law, regardless of whether the department has made a formal assessment of tax.

10.2(2) Calendar year 1983. The rate of interest upon all unpaid taxes which are due as of January 1, 1983, will be 14 percent per annum (1.2% per month). This interest rate will accrue on taxes which were due and unpaid as of, or after January 1, 1983. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1983. This interest rate of 14 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1983.

10.2(3) Calendar year 1984. The rate of interest upon all unpaid taxes which are due as of January 1, 1984, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1984. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1984. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1984.

10.2(4) Calendar year 1985. The rate of interest upon all unpaid taxes which are due as of January 1, 1985, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1985. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1985. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1985.

10.2(5) *Calendar year 1986.* The interest upon all unpaid taxes which are due as of January 1, 1986, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1986. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1986. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1986.

10.2(6) *Calendar year 1987.* The interest upon all unpaid taxes which are due as of January 1, 1987, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1987. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1987. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1987.

10.2(7) *Calendar year 1988.* The interest upon all unpaid taxes which are due as of January 1, 1988, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1988. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1988. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1988.

10.2(8) *Calendar year 1989.* The interest upon all unpaid taxes which are due as of January 1, 1989, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1989. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1989. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1989.

10.2(9) *Calendar year 1990.* The interest upon all unpaid taxes which are due as of January 1, 1990, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1990. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1990. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1990.

10.2(10) *Calendar year 1991.* The interest upon all unpaid taxes which are due as of January 1, 1991, will be 12 percent per annum (1.0% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1991. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1991. This interest rate of 12 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1991.

10.2(11) *Calendar year 1992.* The interest upon all unpaid taxes which are due as of January 1, 1992, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1992. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1992. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1992.

10.2(12) *Calendar year 1993.* The interest upon all unpaid taxes which are due as of January 1, 1993, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1993. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1993. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1993.

10.2(13) *Calendar year 1994.* The interest upon all unpaid taxes which are due as of January 1, 1994, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1994. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1994. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1994.

10.2(14) *Calendar year 1995.* The interest upon all unpaid taxes which are due as of January 1, 1995, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1995. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1995. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1995.

10.2(15) *Calendar year 1996.* The interest upon all unpaid taxes which are due as of January 1, 1996, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1996. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1996. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1996.

10.2(16) *Calendar year 1997.* The interest rate upon all unpaid taxes which are due as of January 1, 1997, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1997. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 1997. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1997.

10.2(17) *Calendar year 1998.* The interest rate upon all unpaid taxes which are due as of January 1, 1998, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1998. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 1998. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1998.

10.2(18) *Calendar year 1999.* The interest rate upon all unpaid taxes which are due as of January 1, 1999, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1999. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 1999. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1999.

10.2(19) *Calendar year 2000.* The interest rate upon all unpaid taxes which are due as of January 1, 2000, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2000. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2000. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2000.

10.2(20) *Calendar year 2001.* The interest rate upon all unpaid taxes which are due as of January 1, 2001, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2001. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2001. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2001.

10.2(21) Calendar year 2002. The interest rate upon all unpaid taxes which are due as of January 1, 2002, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2002. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2002. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2002.

10.2(22) Calendar year 2003. The interest rate upon all unpaid taxes which are due as of January 1, 2003, will be 7 percent per annum (0.6% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2003. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2003. This interest rate of 7 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2003.

This rule is intended to implement Iowa Code section 421.7.

701—10.3(422,450,452A) Interest on refunds. For those taxes on which interest accrues on refunds under Iowa Code sections 422.25(3), 422.28, 450.94, and 452A.65, interest shall accrue through the month in which the refund is mailed to the taxpayer and no further interest will accrue unless the department did not use the most current address as shown on the latest return or refund claim filed with the department.

This rule is intended to implement Iowa Code sections 422.25(3), 422.28, 450.94 and 452A.65.

701—10.4(421) Frivolous return penalty. A \$500 civil penalty is imposed on the return of a taxpayer that is considered to be a “frivolous return.” A “frivolous return” is: (1) A return which lacks sufficient information from which the substantial correctness of the amount of tax liability can be determined or contains information that on its face indicates that the amount of tax shown is substantially incorrect, or (2) a return which reflects a position of law which is frivolous or is intended to delay or impede the administration of the tax laws of this state.

If the frivolous return penalty is applicable, the penalty will be imposed in addition to any other penalty which has been assessed. If the frivolous return penalty is relevant, the penalty may be imposed even under circumstances when it is determined that there is no tax liability on the return.

The frivolous return penalty is virtually identical to the penalty for frivolous income tax returns which is authorized in Section 6702 of the Internal Revenue Code. The department will follow federal guidelines and court cases when determining whether or not the frivolous return penalty should be imposed.

The frivolous return penalty may be imposed on all returns filed with the department and not just individual income tax returns. The penalty may be imposed on an amended return as well as an original return. The penalty may be imposed on each return filed with the department.

10.4(1) Nonexclusive examples of circumstances under which the frivolous return penalty may be imposed. The following are examples of returns filed in circumstances under which the frivolous return penalty may be imposed:

a. A return claiming a deduction against income or a credit against tax liability which is clearly not allowed such as a “war,” “religious,” “conscientious objector” deduction or tax credit.

b. A blank or partially completed return that was prepared on the theory that filing a complete return and providing required financial data would violate the Fifth Amendment privilege against self-incrimination or other rights guaranteed by the Constitution.

c. An unsigned return where the taxpayer refused to sign because the signature requirement was “incomprehensible or unconstitutional” or the taxpayer was not liable for state tax since the taxpayer had not signed the return.

d. A return which contained personal and financial information on the proper lines but where the words “true, correct and complete” were crossed out above the taxpayer’s signature and where the taxpayer claimed the taxpayer’s income was not legal tender and was exempt from tax.

e. A return where the taxpayer claimed that income was not “constructively received” and the taxpayer was the nominee-agent for a trust.

f. A return with clearly inconsistent information such as when 99 exemptions were claimed but only several dependents were shown.

g. A document filed for refund of taxes erroneously collected with the contention that the document was not a return and that no wage income was earned. This was inconsistent with attached W-2 Forms reporting wages.

10.4(2) *Nonexclusive examples where the frivolous return penalty is not applicable.* The following examples illustrate situations where the frivolous return penalty would not be applicable:

a. A return which includes a deduction, credit, or other item which may constitute a valid item of dispute between the taxpayer and the department.

b. A return which includes innocent or inadvertent mathematical or clerical errors, such as an error in addition, subtraction, multiplication, or division or the incorrect use of a table provided by the department.

c. A return which includes a statement of protest or objection, provided the return contains all required information.

d. A return which shows the correct amount of tax due, but the tax due is not paid.

This rule is intended to implement Iowa Code section 421.7.

701—10.5(421) Exceptions from penalty provisions for taxes due and payable on or after January 1, 1987, and for tax periods ending on or before December 31, 1990. The penalty provided for failure to remit at least 90 percent of the tax due or of the tax due with the filing of the deposit form or return or to pay at least 90 percent of the tax required to be shown as due on the return under Iowa Code sections 422.16, 422.25, 422.58, 422.66, 423.18, 424.17, 435.5, 450.63, 450A.12, 451.12, 452A.65, 453A.28 or 453A.46 shall not be assessed by the department or paid by the taxpayer under any of the following conditions:

1. The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department.

If upon audit of the original and amended returns, additional tax is found to be due and payments made with the original and amended return after application of the payments to penalty, interest, and then tax due, do not equal at least 90 percent of the tax required to be shown due, penalty will be assessed.

Payments made with the original return include any amounts refunded or credited to a subsequent tax liability.

The term “any contact by the department” means any written correspondence from the department including a notice of adjustment or assessment regarding a return or the scheduling in writing of an audit of a return or commencement of an audit without prior notification.

2. The taxpayer provides written notification to the department of a federal audit while it is in progress and voluntarily files an amended return within 60 days of the final disposition of the federal government’s audit and pays all tax shown to be due on the return. A copy of the written notification to the department should be attached to the amended return when it is filed.

3. The return or deposit is timely, but erroneously, mailed with adequate postage to the Internal Revenue Service or another state agency and the taxpayer provides proof of timely mailing with adequate postage. See Iowa Code sections 622.105 and 622.106 for proof of timely mailing.

4. The return or deposit is timely mailed with adequate postage to the department and the taxpayer provides proof of timely mailing with adequate postage. See Iowa Code sections 622.105 and 622.106 for proof of timely mailing.

5. The taxpayer presents proof that the taxpayer relied upon documented written erroneous advice relating to the tax deficiency from the department, county treasurer, or federal Internal Revenue Service, whichever is appropriate.

This rule is intended to implement Iowa Code section 421.27.

PENALTY FOR TAX PERIOD BEGINNING AFTER JANUARY 1, 1991

701—10.6(421) Penalties. A penalty shall be assessed upon all tax and deposits due under the following circumstances:

1. For failure to timely file a return or deposit form there is a 10 percent penalty. This penalty, once imposed, will be assessed on all subsequent amounts due or required to be shown due on the return or deposit form.

EXAMPLE: The taxpayer fails to timely file a return and fails to timely pay the tax due. The department will assess a 10 percent penalty for failure to timely file the return but will not assess a 5 percent penalty for failure to timely pay. The department subsequently audits the untimely filed return and determines additional tax is due. The department shall assess a 10 percent penalty on the additional tax found due by an audit.

2. For failure to timely pay the tax due on a return or deposit form, there is a 5 percent penalty.

3. For a deficiency of tax due on a return or deposit form found during an audit, there is a 5 percent penalty. For purposes of this penalty, the audit deficiency shall be assessed only when there is a timely filed return or deposit form.

Audit deficiency occurs when the department determines additional tax is due.

4. For willful failure to file a return or deposit form with the intent to evade tax, or in the case of willfully filing a false return or deposit form with the intent to evade tax, there is a 75 percent penalty.

The penalty rates are uniform for all taxes and deposits due under this chapter.

The penalty for failure to timely file will take precedence over the penalty for failure to timely pay or an audit deficiency when more than one penalty is applicable.

5. Examples to illustrate the computation of penalty for tax periods beginning on or after January 1, 1991.

The following are examples to illustrate the computation of penalties imposed under rule 10.7(421). For purposes of these examples, interest has been computed at the rate of 12 percent per year or 1 percent per month. The tax due amounts are assumed to be the total amounts required to be shown due when considering whether the failure to pay penalty should be assessed on the basis that less than 90 percent of the tax was paid.

Example (a) — Failure to File

- a. Tax due is \$100.
- b. Return filed 3 months and 10 days after the due date.
- c. \$100 paid with the return.

The calculation for additional tax due is shown below:

Tax	\$100
Penalty	10 (10% failure to timely file)
Interest	4 (4 months interest)
Total	<u>\$114</u>
Less payment	100
Additional tax due	<u>\$ 14</u>

Example (b) — Failure to Pay

- a. Tax due is \$100.
- b. Return is timely filed.
- c. \$0 paid.

The calculation for the total amount due 5 months after the due date is shown below:

Tax	\$100
Penalty	5
Interest	5 (5 months interest)
Total	<u>\$110</u>

Example (c) — Failure to File and Failure to Pay

- a. Tax due is \$100.
- b. Return is filed 2 months and 10 days after the due date.
- c. \$0 paid.

The calculation for the total amount due 3 months after the due date is shown below:

Tax	\$100
Penalty	10 (10% for failure to file)
Interest	3 (3 months interest)
Total due in 3rd month	<u>\$113</u>

Example (d) — Audit on Timely Filed Return

- a. \$100 in additional tax found due.
- b. Timely filed return.
- c. Audit completed 8 months after the due date of the return.
- d. Return showed \$100 as the computed tax, which was paid with the return.

The calculation for the total amount due is shown below:

Computed tax after audit	\$200
Less tax paid with return	<u>100</u>
Additional tax due	<u>\$100</u>
Penalty	5 (5% for audit deficiency)
Interest	8 (8 months interest)
Total due	<u>\$113</u>

Example (e) — Audit on Late Return Granted an Exception From Failure to File

- a. Tax due is \$100.
- b. Return filed 3 months and 10 days after the due date.
- c. \$100 paid with the return.
- d. Taxpayer is granted an exception from penalty for failure to file. (Return is then considered timely filed.)
- e. Audit completed 8 months after the due date of the return. \$100 additional tax found due.
- f. Return showed \$100 as the computed tax which was paid with the return.

The computation for the total amount due is shown below:

Computed tax after audit	\$200
Less tax paid with return	100
Additional tax due	<u>\$100</u>
Penalty	5 (5% for audit deficiency. No penalty for failure to file.)
Interest	8 (8 months interest)
Total due	<u>\$113</u>

Example (f) — Audit on Late Filed Return No Pay Return

- a. \$100 claimed as tax on the return.
- b. \$100 in additional tax found due.
- c. Return filed 3 months and 10 days after the due date.
- d. Audit completed 8 months after the due date.

The computation for the total amount due is shown below:

Computed tax after audit	\$200
Penalty	20 (10% for failure to file)
Interest	16 (8 months interest)
Total due	<u>\$236</u>

701—10.7(421) Waiver of penalty—definitions. A penalty, if assessed, shall be waived by the department upon a showing of the circumstances stated below.

10.7(1) For purposes of these rules, the following definitions apply:

“*Act of God*” means an unusual and extraordinary manifestation of nature which could not reasonably be anticipated or foreseen and cannot be prevented by human care, skill, or foresight. There is a rebuttable presumption that an “act of God” that precedes the due date of the return or form by 30 days is not an act of God for purposes of an exception to penalty.

“*Immediate family*” includes the spouse, children, or parents of the taxpayer. There is a rebuttable presumption that relatives of the taxpayer beyond the relation of spouse, children, or parents of the taxpayer are not within the taxpayer’s immediate family for purposes of the waiver exceptions.

“*Sanctioned self-audit program*” means an audit performed by the taxpayer with forms provided by the department as a result of contact by the department to the taxpayer prior to voluntary filing or payment of the tax. Filing voluntarily without contact by the department does not constitute a sanctioned self-audit.

“*Serious, long-term illness or hospitalization*” means an illness or hospitalization, documented by written evidence, which precedes the due date of the return or form by no later than 30 days and continues through the due date of the return or form and interferes with the timely filing of the return or form. There is a rebuttable presumption that an illness or hospitalization that precedes the due date of the return or form by more than 30 days is not an illness or hospitalization for purposes of an exception to penalty. The taxpayer will be provided an automatic extension of 30 days from the date the return or form is originally due or the termination of the serious, long-term illness or hospitalization whichever is later without incurring penalty. The taxpayer has the burden of proof on whether or not a serious, long-term illness or hospitalization has occurred.

“*Substantial authority*” means the weight of authorities for the tax treatment of an item is substantial in relation to the weight of authorities supporting contrary positions.

In determining whether there is substantial authority, only the following will be considered authority: applicable provisions of Iowa statutes; the Internal Revenue Code; Iowa administrative rules construing those statutes; court cases; administrative rulings; legal periodicals; department newsletters and tax return and deposit form instruction booklets; tax treaties and regulations; and legislative intent as reflected in committee reports.

Conclusions reached in treaties, legal opinions rendered by other tax professionals, descriptions of statutes prepared by legislative staff, legal counsel memoranda, and proposed rules and regulations are not authority.

There is substantial authority for the tax treatment of an item if there is substantial authority at the time the return containing the item is due to be filed or there was substantial authority on the last day of the taxable year to which the return relates.

The taxpayer must notify the department at the time the return, deposit form, or payment is originally due of the substantial authority the taxpayer is relying upon for not filing the return or deposit form or paying the tax due.

10.7(2) Reserved.

701—10.8(421) Penalty exceptions. Under certain circumstances the penalty for failure to timely file a return or deposit, failure to timely pay the tax shown due, or the tax required to be shown due with the filing of a return or a deposit form, or failure to pay following an audit by the department is waived.

When an exception is granted under subrule 10.9(1), the return or deposit form is considered timely filed for purposes of nonimposition of penalty only.

10.8(1) For failure to timely file a return or deposit form, the 10 percent penalty is waived upon a showing of the following exceptions:

a. At least 90 percent of the tax required to be shown due has been paid by the due date of the tax return or deposit form.

b. One late return allowed. A taxpayer required to file a return or deposit form quarterly, monthly, or semimonthly is allowed one untimely filed return or deposit form within a three-year period. The use by the taxpayer of any other penalty exception under this subrule will not count as a late return or deposit form for purposes of this subrule.

The exception for one late return in a three-year period is determined on the basis of the tax period for which the return or form is due and not the date on which the return is filed.

c. Death of a taxpayer, member of the immediate family of the taxpayer, or death of the person directly responsible for filing the return and paying the tax, when the death interferes with timely filing. There is a rebuttable presumption that a death which occurs more than 30 days before the original date the return or form is due does not interfere with timely filing.

d. The onset of serious, long-term illness or hospitalization of the taxpayer, a member of the taxpayer’s immediate family, or the person directly responsible for filing the return and paying the tax.

e. Destruction of records by fire, flood, or act of God.

f. The taxpayer presents proof that the taxpayer at the due date of the return, deposit form, or payment relied upon applicable, documented, written advice made specifically to the taxpayer, the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal Internal Revenue Service. The advice should be relevant to the agency offering the advice and not beyond the scope of the agency's area of expertise and knowledge. The advice must be current and not superseded by a court decision, ruling of a quasi-judicial body such as an administrative law judge, the director, or the state board of tax review, or by the adoption, amendment, or repeal of a rule or law.

g. Reliance upon the results of a previous audit was a direct cause for failure to file or pay where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision or by adoption, amendment, or repeal of a rule or law.

h. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form. Mathematical, computation, or transposition errors are not considered as facts and circumstances disclosed on a return or deposit form. These types of errors will not be considered as penalty exceptions.

i. The return, deposit form, or payment is timely, but erroneously, mailed with adequate postage to the Internal Revenue Service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage. The taxpayer must provide competent evidence of the mailing as stated in Iowa Code section 622.105.

j. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

k. The failure to file was discovered through a sanctioned self-audit program conducted by the department.

10.8(2) For failure to timely pay the tax due on a return or deposit form, the 5 percent penalty is waived upon a showing of the following exceptions:

a. At least 90 percent of the tax required to be shown due has been paid by the due date of the tax return or deposit form.

b. The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department, except under a sanctioned self-audit program conducted by the department.

c. The taxpayer provides written notification to the department of a federal audit while it is in progress and voluntarily files an amended return which includes a copy of the federal document showing the final disposition or final federal adjustments within 60 days of the final disposition of the federal government's audit.

d. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal Internal Revenue Service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

e. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

f. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form. Mathematical, computation, or transposition errors are not considered as facts and circumstances disclosed on a return or deposit form. These types of errors will not be considered as penalty exceptions.

g. The return, deposit form, or payment is timely, but erroneously, mailed with adequate postage to the Internal Revenue Service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage. The taxpayer must provide competent evidence of the mailing as stated in Iowa Code section 622.105.

h. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

10.8(3) For a deficiency of tax due on a return or deposit form found during an audit, the 5 percent penalty is waived under the following exceptions:

a. At least 90 percent of the tax required to be shown due has been paid by the due date.

b. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal Internal Revenue Service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

c. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax shown due or required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

d. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form. Mathematical, computation, or transposition errors are not considered as facts and circumstances disclosed on a return or deposit form. These types of errors will not be considered as penalty exceptions.

701—10.9(421) Notice of penalty exception for one late return in a three-year period. The penalty exception for one late return in a three-year period will automatically be applied to a return or deposit form by the department if the taxpayer is eligible for the exception.

The exception for one late return in a three-year period is applied to the returns or deposit forms in the order they are processed and not in the order which the returns or deposit forms should have been filed.

701—10.10 to 10.19 Reserved.

RETAIL SALES

[Prior to 1/23/91, see 701—12.10(422,423) and 12.11(422, 423)]

701—10.20(422,423) Penalty and interest computation.

10.20(1) *Computations for tax periods where the due date occurs after December 31, 1980.* The filing of the tax return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed, unless it is shown that such failure was due to reasonable cause. Iowa Code section 422.58(1) provides a penalty for failure to file a permit holder's semimonthly or monthly tax deposit or a return or, if a permit holder fails to remit at least 90 percent of the tax due with the filing of the return or pay less than 90 percent of any tax required to be shown on the return, excepting the period between the completion of an examination of the books and records of a taxpayer and the giving of notice to the taxpayer that a tax or additional tax is due. The rate of penalty shall be 5 percent per month or fraction thereof, not to exceed 25 percent in the aggregate for failure to file a deposit or return and for failure to pay at least 90 percent of the tax due.

In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay if, after the return is filed, there is a continued failure to pay during the five-month period after the tax was due (taking into consideration any extensions of time to file and pay). The combined penalties for failure to file or pay shall not exceed 25 percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return. Therefore, if an audit results in an additional tax which was required to be shown as due on the return, the additional tax is subject to the penalty for failure to pay, unless the failure was due to reasonable cause. See 701—subrule 44.3(3) for examples of the penalty computation. These examples would also apply to sales and use tax unless 90 percent of the tax is remitted timely, then no penalty applies.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax then due in the order specified.

In addition to the penalty, interest accrues on the tax or additional tax at the rate of three-fourths of one percent per month, counting each fraction of a month as an entire month, computed from the date the return or deposit was required to be filed until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

10.20(2) *Computations for tax periods for taxes initially due and payable on or after January 1, 1985, but before January 1, 1987.*

a. Penalty for failure to file return. Subsequent to December 31, 1984, a permit holder or other person who fails to file a semimonthly or monthly tax deposit form or a quarterly or annual return shall be subject to penalty for this failure only if the failure to file is willful. The penalty for willful failure to file a deposit form or return is 50 percent of the amount required to be shown on the deposit form or return, see Iowa Code section 422.58(1). When it is appropriate to impose this 50 percent penalty, it shall be in lieu of the penalty described in 701—subrule 12.10(4), paragraph "b."

b. Penalty for failure to timely remit tax. If a permit holder or other person fails to remit with the deposit form or pay with the return at least 90 percent of the tax due and owing, there shall be added to the amount of tax required to be shown on the deposit form or return a penalty of 10 percent of the tax due. Under Iowa Code section 422.58(1), the director cannot waive payment of this penalty. Thus, the equitable doctrine of waiver is not available to a permit holder or other person seeking relief from the penalty.

Also, that portion of the statute allowing the right to demonstrate that failure to timely pay has been due to reasonable cause has been repealed, House File 2507 supra. No statutory basis for remission of the 10 percent penalty now exists. Therefore, if it is shown that a fixed amount of tax was due to be paid upon a date certain and less than 90 percent of that amount has been paid, the director may not excuse payment of penalty. The penalty described in this subrule shall include a penalty for additional tax shown to be due and owing as the result of an audit. See 701—subrule 44.3(5) for examples which illustrate the computation of penalty for tax due on or after January 1, 1985.

c. Application of payments. All payments shall be first applied to penalty, then interest, and the balance, if any, to the amount of tax then due in the order specified. If penalty, interest, and tax are due and owing for more than one tax period, any payment shall be applied first to the penalty, then the interest, then the tax for the oldest tax period; then to the penalty, interest and tax to the period immediately subsequent, and so on until the payment is exhausted.

EXAMPLE: A permit holder is an annual filer. As a result of audit, it is determined that the permit holder owes penalty, interest, and tax for the years 1984, 1983, and 1982. The total amount owed for tax, penalty and interest for the three years is \$1,200. \$200 of this amount is tax for the year 1984. The permit holder remits a single payment of \$1,000. The payment would be applied first to the penalty, then interest, then tax owing for 1982. The same application would then be made to penalty, interest and tax owing for 1983. Any amount remaining would be applied first to penalty and then interest owing for 1984. The \$200 in tax due for the year 1984 would remain to be paid.

d. Computation of penalty for taxes initially due and payable prior to January 1, 1985, and overdue and payable on that date. The date upon which the tax initially became delinquent (taking into consideration any extension of time to pay the tax due) determines which penalty applied. If the initial delinquency occurs prior to January 1, 1985, the aggregating penalty applies. If the initial delinquency occurs on or after January 1, 1985, only the flat rate penalties of 5 or 10 percent apply.

10.20(3) *Computations for tax periods for taxes initially due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991.*

a. Penalty for failure to file return. Subsequent to December 31, 1986, a permit holder or other person who willfully fails to file a semimonthly or monthly tax deposit form or a quarterly or annual return will be subject to penalty for this failure. The penalty for willful failure to file a deposit form or return is 75 percent of the amount required to be shown on the deposit form or return, see Iowa Code section 422.58(1). When it is appropriate to impose this 75 percent penalty, it will be in lieu of the penalty described in paragraph 10.20(3)“*b.*”

b. Penalty for failure to timely remit tax. If a permit holder or other person fails to remit with the deposit form or pay with the return at least 90 percent of the tax due and owing on or before the due date of the deposit or return, there will be added to the amount of tax required to be shown on the deposit form or return a penalty of 15 percent of the tax due. Under Iowa Code section 422.58(1), the director cannot waive payment of this penalty. Thus, the equitable doctrine of waiver is not available to a permit holder or other person seeking relief from the penalty.

Also, that portion of the statute allowing the right to demonstrate that failure to timely pay has been due to reasonable cause has been repealed. No statutory basis for remission of the 15 percent penalty now exists. Therefore, if it is shown that a fixed amount of tax was due to be paid upon a date certain and less than 90 percent of that amount has been paid, the director may not excuse payment of penalty. The penalty described in this subrule will include a penalty for additional tax shown to be due and owing as the result of an audit. See subrule 10.41(6) for examples which illustrate the computation of penalty for tax due on or after January 1, 1987, but for tax years ending before January 1, 1991.

c. Application of payments. All payments must be first applied to penalty, then interest, and the balance, if any, to the amount of tax then due in the order specified. See *Ashland Oil Inc. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). If penalty, interest, and tax are due and owing for more than one tax period, any payment must be applied first to the penalty, then the interest, then the tax for the oldest tax period; then to the penalty, interest, and tax to the period immediately subsequent, and so on until the payment is exhausted.

EXAMPLE: A permit holder is an annual filer. As a result of audit, it is determined that the permit holder owes penalty, interest, and tax for the years 1984, 1983, and 1982. The total amount owed for tax, penalty, and interest for the three years is \$1,200. \$200 of this amount is tax for the year 1984. The permit holder remits a single payment of \$1,000. The payment would be applied first to the penalty, then interest, then tax owing for 1982. The same application would then be made to penalty, interest, and tax owing for 1983. Any amount remaining would be applied first to penalty and then interest owing for 1984. The \$200 in tax due for the year 1984 would remain to be paid and would continue to accrue interest.

d. Computation of penalty for taxes initially due and payable prior to January 1, 1987, and overdue and payable on that date. The date upon which the tax initially became delinquent determines which penalty applied. If the initial delinquency occurs prior to January 1, 1987, the 10 percent penalty applies. If the initial delinquency occurs on or after January 1, 1987, but for tax periods ending before January 1, 1991, only the flat rate penalties of 7.5 or 15 percent apply. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

See rule 701—10.5(421) for statutory exemptions to penalty for tax due and payable on or after January 1, 1987. See rule 701—10.8(421) for exceptions to penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code section 422.58(1).

701—10.21(422,423) Request for waiver of penalty. Any taxpayer who has good reason to object to any penalty imposed by the department for failure to timely file returns, monthly deposits or pay the tax may submit a request for waiver seeking that the penalty be waived for taxes initially due and payable prior to January 1, 1985. If it can be shown to the director's satisfaction that the failure was due to reasonable cause, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer's failure to file the return, monthly deposit or pay the tax as required by law. The following are examples of situations that may be accepted by the director as being reasonable cause:

1. Where the return, monthly deposit or payment was filed on time, but filed erroneously with another state agency or the Internal Revenue Service.
2. A showing that the completed return, monthly deposit was mailed in time to reach the department in the normal course of mails, within the legal period. If the due date is a Saturday, Sunday or legal holiday, the following business day is within the legal period.
3. Where the delay was caused by death or serious illness of the taxpayer responsible for filing.
4. Where the delay was caused by prolonged unavoidable absence of the taxpayer responsible for filing.
5. Where the delinquency was caused by destruction by fire or other casualty of the taxpayer's records.

6. A showing that the delay or failure was due to erroneous information given the taxpayer by an employee of the department.

7. The department will allow without penalty one late return or monthly deposit, or one timely filed return containing a mathematical error if the taxpayer has had no reported delinquencies in the past 36 months. (Not applicable to penalty established by audit.)

8. Where the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return or monthly deposit within the prescribed time, then the delay is due to reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that ordinary business care and prudence were exercised in providing for payment of the taxpayer's liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if the taxpayer paid on the due date. What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, *Armstrong's Inc. v. Iowa Department of Revenue*, 320 N.W.2d 623 (Iowa 1982).

A request for waiver of penalty on an assessment will be treated as timely filed with the department, if filed no later than 30 days following the date of the notice of assessment. See rule 701—11.6(422,423) regarding notices of adjustment and assessment.

This rule is intended to implement Iowa Code sections 422.58 and 423.18.

701—10.22 to 10.29 Reserved.

USE

[Prior to 1/23/91, see 701—30.10(423)]

701—10.30(423) Penalties for late filing of a monthly tax deposit or use tax returns. Use tax monthly deposits shall be filed on or before the twentieth of the month following the month in which the tax was collected. Use tax quarterly returns shall be required to be filed on or before the last day of the month following the close of each quarterly period.

10.30(1) For taxes initially due and payable prior to January 1, 1985, failure to file a monthly deposit or use tax return or a corrected return or to pay use tax due on or before the due date shall result in a delinquent deposit or return and be subject to penalty and interest. See subrules 10.20(1), 10.20(2), and 10.20(3) for computation of penalty.

10.30(2) For taxes initially due and payable on or after January 1, 1985, but before January 1, 1987, only willful failure to file a monthly deposit or use tax return or a corrected return will be subject to penalty. Persons who fail to timely pay use tax are subject to a penalty which cannot be waived by the director and may not be excused for reasonable cause. If the person who fails to timely pay use tax is a retailer maintaining a place of business in this state, the penalty for failure to pay will be 10 percent of the tax required to be paid. Rule 701—30.1(423) describes in detail the persons who are subject to this 10 percent penalty. For any person who is not a retailer, the penalty for failure to timely pay use tax is 5 percent of the tax required to be paid.

See rule 10.20(422,423) for computation of penalty and interest before January 1, 1991. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

10.30(3) For taxes initially due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991, only willful failure to file a monthly deposit or use tax return or a corrected return will be subject to penalty. Persons who fail to timely pay use tax are subject to a penalty which cannot be waived by the director and may not be excused for reasonable cause. If the person who fails to timely pay use tax is a retailer maintaining a place of business in this state, the penalty for failure to pay is 15 percent of the tax required to be paid. Rule 701—30.1(423) describes in detail the persons who are subject to this 15 percent penalty. For any person who is not a retailer, the penalty for failure to timely pay use tax is 7.5 percent of the tax required to be paid. See rule 701—10.5(421) for statutory exemptions to penalty for taxes due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 10.20(422,423) for computation of penalty and interest for taxes due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code sections 422.58 and 423.18.

701—10.31 to 10.39 Reserved.

INDIVIDUAL INCOME

[Prior to 1/23/91, see 44.1(422), 44.3(422), 44.7(422) and 44.8(422)]

701—10.40(422) General rule. The computation of penalty, as outlined in this chapter, shall apply to individual, fiduciary, and withholding tax. The penalty for failure to file an estimated declaration of individual income tax or for underpaying an estimated declaration of individual income tax is computed according to the provisions of the Internal Revenue Code as authorized by Iowa Code paragraph 422.16(11)“e.” For tax years beginning on or after July 1, 1974, the withholding tax provisions for waiver of penalty are authorized by Iowa Code subsection 422.16(10). For tax periods beginning on or after July 1, 1974, there is no authority in the Iowa Code to waive the penalty assessed for failure to file or for underpayment of an estimated declaration of individual income tax. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code section 422.16.

701—10.41(422) Computation for tax payments due on or after January 1, 1981, but before January 1, 1982. The filing of the return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed, unless it is shown that such failure was due to reasonable cause.

A penalty of 5 percent per month, not to exceed 25 percent in the aggregate, is imposed for failure to file a return or pay the tax due. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition for failure to pay, if after the return is filed, there is a continued failure to pay the tax due during the five-month period after the tax was due (taking into consideration any extensions of time to file the return). The combined penalties for failure to file or pay shall not exceed 25 percent of the tax due. For purposes of computing the penalty in case of failure to file a return or failure to pay the tax required to be paid with the filing of the return, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return. If a return is determined to be delinquent, then the penalty shall continue to be assessed on any additional amounts of tax determined to be due. The percent of penalty applied to additional amounts of tax determined to be due shall be limited to the percentage which had accrued when the initial penalty was assessed and paid.

All payments shall be first applied to the penalty and then the interest, and the balance, if any, to the amount of tax then due, in the order specified.

A return filed within the period of an extension granted will not be considered delinquent.

In addition to the penalty computed above there shall be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment and the refund, considering each fraction of a month as an entire month.

10.41(1) *Computation for tax due on or after January 1, 1982, but before January 1, 1985.* The filing of the return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed unless it is shown that such failure was due to reasonable cause.

Iowa Code section 422.25 provides a penalty of 5 percent per month, not to exceed 25 percent in the aggregate, for the failure to file a return or for the failure to pay at least 90 percent of tax required to be shown due. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay, if after the return is filed, there is a continued failure to pay at least 90 percent of the tax during the five-month period after the tax was due (taking into consideration any extensions of time to file a return). The combined penalties for failure to file or pay shall not exceed 25 percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return.

In considering if penalty should be assessed for failure to pay, it must be determined whether tax payments and credits equal or exceed 90 percent of the tax required to be shown on the return. Tax required to be shown on the return is defined as those taxes required to be computed under Iowa Code section 422.5 (income tax, lump sum tax, and minimum tax) plus school district surtax less the nonrefundable credits (exemption and child care credit) allowed under Iowa Code section 422.12. Tax payments or credits to be applied against the tax required to be shown on the return are (1) Iowa income taxes withheld, (2) Iowa estimate tax payments, (3) out-of-state tax credits, (4) motor vehicle fuel tax credits, (5) tax payments made prior to the filing of the return, and (6) any tax payment made with the return.

Therefore, if an audit results in additional tax which was required to be shown as due on the return by the due date (taking into consideration any extension of time to file a return), so that less than 90 percent of the tax was paid, the additional tax is subject to penalty for failure to pay, unless the failure was due to reasonable cause. All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amounts of tax then due in the order specified.

In addition to the penalty computed above, there shall be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month.

10.41(2) *Examples to illustrate the computation of penalties for tax due on or after January 1, 1982, but before January 1, 1985.* The following are examples to illustrate the computation of penalties imposed under 701—subrule 44.3(2). For the purposes of these examples only, interest has been computed at the rate of one and four-tenths of one percent per month. In addition, for the purposes of these examples, the tax due amounts are assumed to be the total amounts required to be shown due when considering whether failure to pay penalties should be assessed on the basis that less than 90 percent of the tax was paid.

Example (a) — Delinquent Return

- a. Tax due is \$100.
- b. Return filed 3 months and 10 days after the due date.
- c. \$100 paid with the return.

The calculation for additional tax due is shown below:

Tax	\$100.00
Penalty	20.00 (20% failure to file penalty)
Interest	5.60 (4 months interest)
Total	<u>\$125.60</u>
Less payment	100.00
Additional tax due	<u>\$ 25.60</u>

The computation below shows the total amount due if payment for the additional tax due is not received until six months after the due date of the return. The example assumes the \$25.60 was assessed by the department during the fourth month.

Additional tax	\$25.60
Penalty	1.28 (5% failure to pay penalty)
Interest	.72 (2 months interest)
Total due	<u>\$27.60</u>

The maximum penalty cannot exceed 25%.

Example (b) — Timely Filed No Remit

- a. Tax due is \$100.
- b. Return was timely filed.
- c. \$0 paid.

The calculation for the total amount due five months after the due date is shown below:

Tax	\$100.00
Penalty	25.00 (the maximum failure to pay penalty - 25% is assessed)
Interest	7.00 (5 months interest)
Total	<u>\$132.00</u>

Example (c) — Late Filed No Remit

- a. Tax due is \$100.
- b. Return is filed 2 months and 10 days after the due date.
- c. \$0 paid.

The calculation for the total amount due three months after the due date is shown below:

Tax	\$100.00	
Penalty	15.00	(15% for failure to file)
Interest	4.20	(3 months interest)
Total due 3rd month	<u>\$119.20</u>	

The computation below shows the total amount due if the return was filed in the third month, but payment was not received until the sixth month after the due date.

Total due 3rd month	\$119.20	
Penalty	10.00	(10% for failure to pay)
Interest	4.20	(additional 3 months interest)
Total	<u>\$133.40</u>	

The maximum penalty of 25% is assessed.

Example (d) — Timely Filed Partial Payment

- a. Tax due is \$100.
- b. Return was timely filed.
- c. \$75 is paid with the return.

The calculation for the total amount due 5 months after the due date is shown below:

Tax	\$100.00	
Less payment	75.00	
Amount due	<u>\$ 25.00</u>	
Additional tax	\$ 25.00	
Penalty	6.25	(the maximum failure to pay penalty is assessed 25%)
Interest	1.75	(5 months interest)
Total due 5th month	<u>\$ 33.00</u>	

Example (e) — Late Filed Partial Pay

- a. Tax due is \$100.
- b. Return is filed 1 month and 10 days after the due date.
- c. \$75 is paid with the return.

The calculation for the additional tax due is shown below:

Tax	\$100.00
Penalty	10.00 (10% failure to file penalty)
Interest	2.80 (2 months interest)
Total due	<u>\$112.80</u>
Less payment	75.00
Additional tax due	<u>\$ 37.80</u>

The computation below shows the total amount due if payment for the additional tax is not received until 6 months after the due date of the return.

Additional tax	\$ 37.80
Penalty	5.67 (15% failure to pay penalty)
Interest	2.12 (4 months additional interest)
Total due 6th month	<u>\$ 45.59</u>

The maximum penalty of 25% is assessed.

Example (f) — Audit on Timely Filed Return

- a. \$100 in additional tax found due.
- b. Timely filed return.
- c. Audit completed 8 months after the due date of the return.
- d. Return showed \$100 as the computed tax, which was paid with the return.

The computation for the total amount due is shown below:

Computed tax after audit	\$200.00
Less tax paid with return	100.00
Additional tax due	<u>100.00</u>
Penalty	\$25.00 (maximum failure to pay penalty - 25%)
Interest	11.20 (8 months interest)
Total due	<u>\$136.20</u>

Failure to pay penalty was assessed since the amount actually paid timely was less than 90 percent of the tax required to be shown due.

Example (g) — Audit on Timely Filed Return — Ninety Percent of the Tax Required Paid Timely

- a. \$100 in additional tax found due.
- b. Timely filed return.
- c. Audit completed 8 months after the due date of the return.
- d. Return showed \$1,900 as computed tax, which was paid with the return.

Computed tax after audit	\$2,000.00
Less tax paid with return	1,900.00
Additional tax due	<u>\$ 100.00</u>
Interest	11.20 (8 months interest)
Total due	<u>\$ 111.20</u>

No penalty was assessed in the above case because at least 90 percent of the tax required to be paid with the return was paid timely.

Example (h) — Audit on Late Filed Return

- a. \$100 in additional tax found due.
- b. Return was filed 10 days after the due date.
- c. Penalty and interest, as well as tax, were paid with the return.
- d. \$100 shown as tax due when the return was filed.
- e. Audit was completed 8 months after the due date of the return.

The computation for the total amount due is shown below:

Tax	\$200.00
Penalty	10.00 (5% failure to file)
Interest	2.80 (1 month interest)
Total due	<u>\$212.80</u>
Less payment	106.40
Additional tax due	<u>\$106.40</u>
Penalty	21.28 (20% failure to pay)
Interest	10.43 (7 months additional interest)
Total due	<u>\$138.11</u>

Example (i) — Audit on Late Filed Return — Ninety Percent of the Tax Paid When Return was Filed

- a. \$100 in additional tax found due.
- b. Return was filed 10 days after the due date.
- c. Penalty and interest, as well as tax were paid with the return.
- d. Return showed \$1,900 as the computed tax.
- e. Audit was completed 8 months after the due date of the return.

The computation for the total amount due is shown below:

Tax	\$2,000.00
Penalty	100.00 (5% failure to file)
Interest	28.00 (1 months interest)
Total due	<u>\$2,128.00</u>
Less payment	<u>\$2,021.60</u>
Additional tax due	<u>\$ 106.40</u>
Interest	10.43 (7 months additional interest)
Total due	<u>\$ 116.83</u>

Failure to pay penalty was not assessed, since the amount paid when the return was late filed was 90 percent or more of the amount required to be shown due.

Example (j) — Audit on Late Filed Partial Pay Return

- a. \$100 in additional tax found due.
- b. Return was filed 10 days after the due date.
- c. \$75 was paid with the return.
- d. \$100 tax shown as due on the return.
- e. Audit completed 8 months after the due date of the return.

The computation for the total amount due is shown below:

Tax	\$200.00
Penalty	10.00 (5% penalty for failure to file)
Interest	2.80 (1 month interest)
Total due	<u>\$212.80</u>
Less payment	75.00
Additional tax due	<u>\$137.80</u>
Penalty	27.56 (20% penalty for failure to pay)
Interest	13.50 (7 months additional interest)
Total due	<u>\$178.86</u>

Example (k) — Audit No Return Filed

- a. \$200 tax found due.
- b. No return filed.
- c. Audit completed 8 months after the due date of the return.

The computation for the total amount due is shown below:

Tax	\$200.00
Penalty	50.00 (25% penalty for failure to file)
Interest	22.40 (8 months interest)
Total due	<u>\$272.40</u>

The failure to file penalty provision is assessed since both the failure to file and failure to pay occurred simultaneously.

Example (l) — Audit on Late Filed No Remit Return

- a. \$100 claimed as tax on the return.
- b. \$100 in additional tax found due.
- c. Return filed 4 months and 10 days after the due date.
- d. Audit completed 11 months after the due date.

The computation for the total amount due is shown below:

Tax	\$200.00
Penalty	50.00 (25% penalty for failure to file)
Interest	30.80 (11 months interest)
Total due	<u>\$280.80</u>

25% penalty for failure to file is applicable to the \$100 claimed as tax on the return and the \$100 found to be due by audit. The failure to pay penalty cannot be imposed since the failure to file penalty has reached the maximum 25%.

Example (m) — Audit on Late Filed No Remit Return

- a. \$100 claimed as tax on the return.
- b. \$100 in additional tax found due.
- c. Return filed one month and ten days after the due date.
- d. Audit completed 11 months after the due date.

The computation for the total amount due is shown below:

Tax	\$200.00
Penalty — Failure to File	20.00
Penalty — Failure to Pay	30.00
Interest	30.80 (11 months interest)
Total due	<u>\$280.80</u>

A 10% penalty for failure to file is applied to the \$200 total tax owed. A failure to pay penalty of 15% is imposed for the remaining three months of the penalty period.

Example (n) — Late Filed Return With Extension, No Remit

- a. Tax due is \$100.
- b. Taxpayer has valid extension through October 31.
- c. Return was filed October 31, with no payment.

The calculation for the total amount due two months after the return was filed is shown below:

Tax	\$100.00
Penalty	10.00 (10% failure to pay penalty)
Interest	11.20 (8 months interest)
Total due	<u>\$121.20</u>

No penalty is assessed during period of extension. Penalty for failure to pay is assessed on the unpaid tax at a rate of 5% from the extended due date (October 31) until the tax is paid, not to exceed 25%.

Example (o) — Return Filed During Period of Extension Without Payment of Interest

- a. Tax owed is \$2,000.
- b. Taxpayer has valid extension through October 31.
- c. \$2,000 paid with the filing of the return on October 31.
- d. Audit is performed 6 months after filing date.

Tax	\$2,000.00
Interest	168.00 (6 months interest)
Total	<u>\$2,168.00</u>
Less payment	2,000.00
Additional tax due	<u>\$ 168.00</u>
Interest	14.11 (6 months additional interest)
Total due	<u>\$ 182.11</u>

No failure to pay penalty was assessed because at least 90 percent of the tax due was paid by the extended due date of October 31.

Example (p) — Audit of Timely Filed Return With Extension

- a. \$100 in additional tax found due.
- b. Extension of 3 months was requested and approved.
- c. \$100 in estimated tax paid with the extension.
- d. Return filed 2 months after the original due date showing tax due of \$100. (Filed timely in extension period.)
- e. Audit completed 4 months after filing date.

The computation for the total amount due is shown below:

Computed tax after audit	\$200.00
Less paid with extension	100.00
Additional tax due	<u>\$100.00</u>
Penalty (15% for failure to pay penalty)	15.00
Interest (6 months)	8.40
Total due	<u>\$123.40</u>

Failure to pay penalty does not begin to accrue until after the extension period.

Example (q) — Audit of Return Where Payment With Return Does Not Exceed Penalty and Interest

- a. \$100 in additional tax found due.
 - b. Return was filed 1 month and 15 days after the due date.
 - c. Return shows \$10 as the computed tax which was paid when the return was filed.
- The calculation for the additional amount due after the filing of the return is shown below:

Computed tax after audit	\$110.00	
Penalty (10% failure to file penalty)	11.00	
Interest	3.08	(2 months interest)
Total due with return	<u>\$124.08</u>	
Less paid with return	10.00	
Computed tax after payment		<u>\$110.00</u>
Penalty remaining after payment		1.00
Interest after payment		3.08
Balance remaining after payment with return	\$114.08	

The computation below shows the total amount due if the payment for the additional tax due is not received until 6 months after the due date of the return.

Tax remaining due	\$110.00
Penalty (15% failure to pay penalty)	16.50
Interest	6.16 (4 months additional interest)
Penalty (balance of failure to file penalty)	1.00
Interest (amount due with filing of return)	3.08
Total due 6th month	<u>\$136.74</u>

Example (r) — Two Audits of a Return Where the First Audit Results in a Refund, and the Second Audit Results in an Assessment

- a. \$250 was paid during the year as estimated tax payments.
- b. Return was filed timely showing \$100 as the computed tax due, \$50 to be credited against the next year's estimated payments and \$100 to be refunded in a warrant to the taxpayer.
- c. Return was audited within 30 days of filing, all information was found to be correct and the \$100 was refunded (without interest).
- d. Eight months after the due date of the original return, taxpayer filed an amended Iowa return, due to an amended federal return, showing \$300 as the computed tax due and paying \$200 with the amended return.
- e. Audit completed 2 months after the filing of the amended return.

The computation for the additional amount due after the filing of the amended return is shown below:

Computed tax from audit	\$300.00
Less estimated tax payments	<u>250.00</u>
Additional tax due	<u>\$ 50.00</u>
Penalty 25% for failure to pay	12.50
Plus amount refunded	100.00
Plus credit to estimate tax	50.00
Plus interest on additional amount due, on amount refunded and on amount credited to estimate tax	<u>22.40</u>
Total due when amended return was filed	<u>\$234.90</u>
Less payment with amended return	<u>200.00</u>
Additional tax due	<u>\$ 34.90</u>
Interest 2.8% (two months)	.98
Total due	<u>\$ 35.88</u>

Penalty can be imposed only upon the additional tax due after consideration of all timely payments and credits.

Example (s) — Return Filed For Refund That Results in a Tax Liability

- a. Return was filed timely showing total tax payments of \$1,500 (income tax withheld of \$400, estimate payments of \$800 and an out-of-state tax credit of \$300).
- b. Return showed a refund of \$180 as computed tax after nonrefundable credits was \$1,200 and school district surtax was 10% of the income tax liability or \$120.
- c. Processing of the return determined that actual computed tax for the return after nonrefundable credits was \$1,600 and the school district surtax was \$160.
- d. Correction of the return was completed 3 months and 10 days after the due date.
The computation for the additional amount due is shown below:

Computed tax after correction	\$1,600.00	
Plus school district surtax	160.00	
Total tax		\$1,760.00
Less tax payments made timely		1,500.00
Total tax		<u>\$ 260.00</u>
Penalty 20% for failure to pay		52.00
Interest (4 months interest)		14.56
Tax due		<u>\$ 326.56</u>

Failure to pay penalty was assessed because the tax payments made timely of \$1,500 did not constitute payment of at least 90 percent of the tax required to be shown on the return of \$1,760.

Example (t) — Two Audits of a Return Where the First Audit Results in an Assessment, and the Second Audit Results in an Overpayment

- a. \$900 was paid during the year as an estimate tax payment.
- b. Return was filed timely showing \$850 as the computed tax and \$50 to be refunded.
- c. Return was reviewed in the second month after the due date and it was determined that the correct computed tax was \$1,200. An assessment for the additional amount due is shown below:

Computed tax from audit	\$1,200.00
Less estimated tax payments	900.00
Additional tax due	<u>\$ 300.00</u>
Penalty 10% for failure to pay	30.00
Interest (2 months interest)	8.40
Total due	<u>\$ 338.40</u>

- d. Taxpayer paid assessment in full in the same month as the assessment was made.
- e. Six months after the due date, the taxpayer submitted an amended return, showing \$950 as the computed tax due.
- f. Audit of the amended return completed 2 months after the filing of the amended return.

The computation of the overpayment after the filing of the amended return is shown below:

Computed tax from audit	\$950.00
Less estimated tax payments	900.00
Additional tax due	<u>\$ 50.00</u>
Interest (2 months interest)	1.40
Total due with return	<u>\$ 51.40</u>
Less payment	338.40
Overassessment	<u>\$287.00</u>
Interest (5 months interest)	20.09
Total overpayment	<u>\$307.09</u>

The failure to file penalty was not imposed in the computation of the overpayment from the audit. The penalty was not imposed, since the tax that had been paid timely was at least 90 percent of the tax required to be shown.

Example (u) — Return Filed Requesting a Refund Which Was Made, and a Later Audit Resulted in an Assessment.

- a. \$100 of tax was withheld or paid prior to the due date.
- b. The return was filed timely showing \$80 as the computed tax, with \$20 to be refunded in a warrant to the taxpayer.
- c. The return was processed within 30 days of filing and the \$20 was refunded (without interest) without a complete audit of the taxpayer’s books and records.
- d. Six months after the due date of the return, an audit of the taxpayer’s books and records.

The computation of the additional amount due is shown below:

Tax withheld or paid prior to the due date	\$100.00
Tax shown due on return	80.00
Refund shown on return and made	<u>\$ 20.00</u>
Computed tax from audit	<u>\$ 90.00</u>
Tax shown due on return	80.00
Additional tax due	<u>\$ 10.00</u>
Interest	.48 (6 months interest)
Total due	<u>\$ 10.48</u>

Penalty is not imposed because more than 90 percent of the tax required to be shown due was paid prior to the due date.

Tax withheld paid prior to due date	\$100.00 = 111%
Tax required to be shown due	<u>\$ 90.00</u>

When making this calculation, the total amount of tax withheld or paid prior to the due date should be used exclusive of any applicable refund or credit to a succeeding tax period.

10.41(3) *Computation for tax due on or after January 1, 1985, but before January 1, 1987.* Iowa Code section 422.25 provides for a penalty of 5 percent for the failure to pay at least 90 percent of the tax shown due on or before the due date or for the failure to pay at least 90 percent of the tax required to be shown due on the return by the due date. The penalty is computed on the amount of tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of tax shown to be due on the return.

In considering if penalty should be assessed for failure to pay, it must be determined whether tax payments and credits equal or exceed 90 percent of the tax required to be shown on the return. Tax required to be shown on the return is defined as those taxes required to be computed under Iowa Code section 422.5 (income tax, lump-sum tax, and minimum tax) plus school district surtax less the credits allowed under Iowa Code sections 422.10, 422.11 and 422.12. Tax payments or credits to be applied against the tax required to be shown on the return are (1) Iowa income taxes withheld, (2) Iowa estimate tax payments, (3) out-of-state tax credits, (4) motor vehicle fuel credits, (5) tax payments made prior to filing of the return, and (6) any tax payment made with the return.

Therefore, if an audit results in additional tax which was required to be shown as due on the return by the due date (taking into consideration any extension of time to file a return), so that less than 90 percent of the tax was paid, the additional tax is subject to penalty for failure to pay. All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amounts of tax then due in the order specified.

The penalty for failure to pay at least 90 percent of the tax required to be shown due is not subject to waiver.

In addition to the penalty computed above, there shall be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month.

10.41(4) *Examples to illustrate the computation of penalty for tax due on or after January 1, 1985, but before January 1, 1987.* The following are examples to illustrate the computation of penalty imposed under 701—subrule 44.3(4). For the purposes of these examples only, interest has been computed at the rate of eight-tenths of one percent per month. In addition, for the purpose of these examples, the tax due amounts are assumed to be the total amounts required to be shown due when considering whether the failure to pay penalty should be assessed on the basis that less than 90 percent of the tax was paid.

Example (a) — Delinquent Return

- a. Tax due is \$100.
- b. Return filed 3 months and 10 days after the due date.
- c. \$100 paid with the return.

The calculation for additional tax due is shown below:

Tax	\$100.00	
Penalty	5.00	(5% failure to pay penalty)
Interest	3.20	(4 months interest)
Total	<u>\$108.00</u>	
Less payment	100.00	
Additional tax due	<u>\$ 8.20</u>	

The computation below shows the total amount due if payment for the additional tax due is not received until 6 months after the due date of the return. The example assumes the \$8.20 was assessed by the department during the fourth month.

Additional tax	\$ 8.20
Interest	.13 (2 months interest)
Total due	<u>\$ 8.33</u>

Example (b) — Timely Filed No Remit

- a. Tax due is \$100.
- b. Return was timely filed.
- c. \$0 paid.

The calculation for the total amount due 5 months after the due date is shown below:

Tax	\$100.00
Penalty	5.00 (5% failure to pay penalty)
Interest	4.00 (5 months interest)
Total	<u>\$109.00</u>

Example (c) — Late Filed No Remit

- a. Tax due is \$100.
- b. Return is filed 2 months and 10 days after the due date.
- c. \$0 paid.

The calculation for the total amount due 3 months after the due date is shown below:

Tax	\$100.00
Penalty	5.00 (5% failure to pay penalty)
Interest	2.40 (3 months interest)
Total due 3rd month	<u>\$107.40</u>

The computation below shows the total amount due if the return was filed in the third month, but payment was not received until the sixth month after the due date.

Total due 3rd month	\$107.40
Interest	2.40 (3 months interest)
Total	<u>\$109.80</u>

Example (d) — Timely Filed Partial Payment

- a. Tax due is \$100.
- b. Return was timely filed.
- c. \$75 is paid with return.

The calculation for the total amount due 5 months after the due date is shown below:

Tax	\$100.00
Less payment	75.00
Amount due	<u>\$ 25.00</u>
Additional tax	\$ 25.00
Penalty	1.25 (5% failure to pay penalty)
Interest	1.00 (5 months interest)
Total due 5th month	<u>\$ 27.25</u>

Example (e) — Timely Filed Partial Payment

- Tax due is \$100.
- Return was timely filed.
- \$92 is paid with return.

The calculation for the total amount due 5 months after the due date is shown below:

Tax	\$100.00
Less payment	92.00
Amount due	<u>\$ 8.00</u>
Additional tax	\$ 8.00
Interest	.32 (5 months interest)
Total due 5th month	<u>\$ 8.32</u>

No penalty is due as 90 percent of tax was paid by the due date.

Example (f) — Late Filed Partial Payment

- Tax due is \$100.
- Return is filed 1 month and 10 days after the due date.
- \$75 is paid with the return.

The calculation for the additional tax due is shown below:

Tax	\$100.00
Penalty	5.00 (5% failure to pay penalty)
Interest	1.60 (2 months interest)
Total due	<u>\$106.60</u>
Less payment	75.00
Additional tax due	<u>\$ 31.60</u>

The computation below shows the total amount due if payment for the additional tax is not received until 6 months after the due date of the return.

Additional tax due	\$ 31.60
Interest	1.01 (4 months interest)
Total due 6th month	<u>\$ 32.61</u>

Example (g) — Audit on Timely Return

- a. \$100 in additional tax found due.
- b. Timely filed return.
- c. Audit completed 8 months after the due date of the return.
- d. Return showed \$100 as the computed tax, which was paid with the return.

The computation for the total amount due is shown below:

Computed tax after audit	\$200.00
Less paid with return	100.00
Additional tax due	<u>100.00</u>
Penalty	5.00 (5% failure to pay penalty)
Interest	6.40 (8 months interest)
Total due	<u>\$111.40</u>

Failure to pay penalty was assessed since the amount actually paid timely was less than 90 percent of the tax required to be shown due.

Example (h) — Audit of Timely Filed Return — Ninety Percent of the Tax Required Paid Timely

- a. \$100 in additional tax found due.
- b. Timely filed return.
- c. Audit completed 8 months after the due date of the return.
- d. Return showed \$1,900 as computed tax, which was paid with the return.

Computed tax after audit	\$2,000.00
Less tax paid with return	1,900.00
Additional tax due	<u>\$ 100.00</u>
Interest	6.40 (8 months interest)
Total due	<u>\$ 106.40</u>

No penalty was assessed in the above case because at least 90 percent of the tax required to be paid with the return was paid timely.

Example (i) — Audit on Late Filed Return

- a. \$100 in additional tax found due.
- b. Return was filed 10 days after the due date.
- c. Penalty and interest, as well as tax were paid with the return.
- d. \$100 shown as tax due when the return was filed.
- e. Audit was completed 8 months after the due date of the returns.

The computation for the total amount due is shown below:

Tax	\$200.00
Penalty	10.00 (5% failure to pay penalty)
Interest	1.60
Total due	<u>\$211.60</u>
Less payment	105.80
Additional tax due	<u>\$105.80</u>
Interest	5.93 (7 months interest)
Total due	<u>\$111.73</u>

Example (j) — Audit on Late Filed Return — Ninety Percent of the Tax Paid by the Due Date

- \$100 in additional tax found due.
- Return was filed 10 days after the due date.
- Return showed \$1,900 as the computed tax.
- \$1,850 was paid through withholding and estimated tax.
- No interest was paid with the filing of the return.
- Audit was completed 8 months after the due date of the return.

The computation for the total amount due is shown below:

Tax	\$2,000.00
Less withholding and estimated tax	1,850.00
Additional tax	<u>\$ 150.00</u>
Interest	1.20 (1 month interest)
Total due	<u>\$ 151.20</u>
Less paid with return	50.00
Additional tax	<u>\$ 101.20</u>
Interest	5.67 (7 months interest)
Total due	<u>\$ 106.87</u>

Failure to pay penalty was not assessed, since the amount paid by the due date was 90 percent or more of the amount required to be shown due.

Example (k) — Audit on Late Filed Partial Pay Return

- \$100 in additional tax found due.
- Return was filed 10 days after the due date.
- \$75 was paid with the return.
- \$100 tax shown as due on the return.
- Audit completed 8 months after the due date of the return.

The computation for the total amount due is shown below:

Tax	\$200.00	
Penalty	10.00	(5% failure to pay penalty)
Interest	1.60	(1 month interest)
Total due	<u>\$211.60</u>	
Less payment	75.00	
Additional tax due	<u>\$136.60</u>	
Interest	7.65	(7 months interest)
Total due	<u>\$144.25</u>	

Example (l) — Audit No Return Filed

- \$200 tax found due.
- No return filed.
- Audit completed 8 months after the due date of the return.

The computation for the total amount due is shown below:

Tax	\$200.00	
Penalty	10.00	(5% failure to pay penalty)
Interest	12.80	(8 months interest)
Total due	<u>\$222.80</u>	

Example (m) — Audit on Late Filed No Remit Return

- \$100 claimed as tax on the return.
- \$100 additional tax found due.
- Return filed 4 months and 10 days after the due date.
- Audit completed 11 months after the due date.

The computation for the total amount due is shown below:

Tax	\$200.00	
Penalty	10.00	(5% failure to pay penalty)
Interest	17.60	(11 months interest)
Total due	<u>\$227.60</u>	

Example (n) — Late Filed Return With Extension No Remit

- Tax due is \$100.
- Taxpayer has valid extension through October 31.
- Return was filed October 31, with no payment.

The calculation for the total amount due 2 months after the return was filed is shown below:

Tax	\$100.00	
Penalty	5.00	(5% failure to pay penalty)
Interest	6.40	(8 months interest)
Total due	<u>\$111.40</u>	

No penalty is assessed during the period of the extension.

Example (o) — Return Filed During Period of Extension Without Payment of Interest

- a. Tax shown due is \$2,000.
- b. Taxpayer has valid extension through October 31.
- c. \$2,000 paid with the filing of the return on October 31.
- d. Audit is performed 6 months after the filing date.

Tax	\$2,000.00
Interest	96.00 (6 months interest)
Total	<u>\$2,096.00</u>
Less payment	<u>2,000.00</u>
Additional tax due	<u>\$ 96.00</u>
Interest	4.60 (6 months interest)
Total due	<u>\$ 100.60</u>

No failure to pay penalty was assessed because at least 90 percent of the tax required to be shown due was paid by the extended due date.

Example (p) — Audit of Timely Filed Return With Extension

- a. \$100 in additional tax found due.
- b. Extension of 4 months was requested.
- c. \$100 in estimated tax paid with extension.
- d. Return filed 2 months after the original due date showing tax due of \$100. (Filed timely in extension period.)
- e. Audit completed 4 months after filing date.

The computation for the total amount is shown below:

Computed tax after audit	\$200.00
Less tax paid with return	<u>100.00</u>
Additional tax due	<u>\$100.00</u>
Penalty	5.00 (5% failure to pay penalty)
Interest	4.80 (6 months interest)
Total due	<u>\$109.80</u>

Failure to pay penalty does not begin to accrue until after the extension period.

Example (q) — Audit of Return Where Payment With Return Does Not Exceed Penalty and Interest

- a. \$200 in additional tax found due.
- b. Return was filed 1 month and 15 days after the due date.
- c. Return shows \$10 as the computed tax which was paid when the return was filed.

The calculation for the additional amount due after the filing of the return is shown below:

Computed tax after audit	\$210.00
Penalty	10.50 (5% failure to pay penalty)
Interest	3.36 (2 months interest)
Total due with return	<u>\$223.86</u>
Less paid with return	10.00
Computed tax after payment	<u>\$210.00</u>
Penalty after payment	.50
Interest after payment	3.36
Balance remaining after payment with return	<u>\$213.86</u>

The computation below shows the total amount due if the payment for the additional tax due is not received until 6 months after the due date of the return.

Tax remaining due	\$210.00
Interest	6.72 (4 months interest)
Penalty (balance of failure to pay penalty)	.50
Interest (amount due with filing of return)	3.36
Total due 6 months	<u>\$220.58</u>

Interest accrues on unpaid tax only, not on unpaid penalty and interest.

Example (r) — Two Audits of a Return Where the First Audit Results in a Refund, and the Second Audit Results in an Assessment

- a. \$250 was paid during the year as estimated tax payments.
- b. Return was filed timely showing \$100 as the computed tax due, \$50 to be credited against the next year's estimated payments and \$100 to be refunded in a warrant to the taxpayer.
- c. Return was audited within 30 days of filing, all information was found to be correct and the \$100 was refunded (without interest).
- d. Eight months after the due date of the original return, taxpayer filed an amended Iowa return, due to an amended federal return, showing \$300 as the computed tax due and paying \$200 with the amended return.
- e. Audit completed 2 months after the filing of the amended return.

The computation for the additional amount due after the filing of the amended return is shown below:

Computed tax from audit	\$300.00
Less estimated tax payment	250.00
Additional tax due	<u>\$ 50.00</u>
Penalty	2.50 (5% failure to pay penalty)
Plus amount refunded	100.00
Plus credit to estimated tax	50.00
Plus interest on additional amount due, on amount refunded and on amount credited to estimated tax	12.80 (8 months interest)
Total due when amended return was filed	<u>\$215.30</u>
Less payment with amended return	200.00
Additional tax due	<u>\$ 15.30</u>
Interest	.25 (2 months interest)
Total due	<u>\$ 15.55</u>

Penalty can be imposed only upon the additional tax due after consideration of all timely payments and credits.

Example (s) — Return Filed for Refund That Results in a Tax Liability

a. Return was filed timely showing total tax payments of \$1,500 (income tax withheld of \$400, estimate payments of \$800 and an out-of-state tax credit of \$300).

b. Return showed a refund of \$180 as computed tax after nonrefundable credits was \$1,200 and school district surtax was 10 percent of the income tax liability or \$120.

c. Processing of the return determined that actual computed tax for the return after nonrefundable credits was \$1,600 and the school district surtax was \$160.

d. Correction of the return was completed 3 months and 10 days after the due date.

The computation for the additional amount due is shown below:

Computed tax after correction	\$1,600.00
Plus school district surtax	160.00
Total tax	<u>\$1,760.00</u>
Less payment made timely	1,500.00
Additional tax due	<u>\$ 260.00</u>
Penalty	13.00 (5% failure to pay penalty)
Interest	8.32 (4 months interest)
Tax due	<u>\$ 281.32</u>

Failure to pay penalty was assessed because the tax payments made timely of \$1,500 did not constitute payment of at least 90 percent of the tax required to be shown due on the return of \$1,760.

Example (t) — Two Audits of a Return Where the First Audit Results in an Assessment, and the Second Audit Results in an Overpayment

- a. \$900 was paid during the year as an estimated tax payment.
- b. Return was filed timely showing \$850 as the computed tax and \$50 to be refunded.
- c. Return was reviewed in the second month after the due date and it was determined that the correctly computed tax was \$1,200. An assessment for the additional amount due is shown below:

Computed tax from audit	\$1,200.00
Less estimated tax payment	900.00
Additional tax due	<u>\$ 300.00</u>
Penalty	15.00 (5% failure to pay penalty)
Interest	<u>4.80 (2 months interest)</u>
Total due	<u>\$ 319.80</u>

- d. Taxpayer paid the assessment in full in the same month as the assessment was made.
- e. Six months after the due date, the taxpayer submitted an amended return, showing \$960 as the computed tax due.
- f. Audit of the amended return was completed 2 months after the filing of the amended return. The computation of the overpayment after the filing of the amended return is shown below:

Computed tax from audit	\$950.00
Less estimated tax payment	900.00
Additional tax due	<u>\$ 50.00</u>
Interest	.80 (2 months interest)
Total due with return	<u>\$ 50.80</u>
Less payment	319.80
Overassessment	<u>\$269.00</u>
Interest	10.75 (5 months interest)
Total overpayment	<u>\$279.75</u>

The failure to pay penalty was not imposed in the computation of the overpayment from the audit. The penalty was not imposed, since the tax that had been paid timely was at least 90 percent of the tax required to be shown due.

Example (u) — Return Filed Requesting a Refund Which Was Made, and a Later Audit Resulted in an Assessment

- a. \$100 of tax was withheld or paid prior to the due date.
- b. The return was filed timely showing \$80 as the computed tax, with \$20 to be refunded in a warrant to the taxpayer.
- c. The return was processed within 30 days of filing and the \$20 was refunded (without interest) without a complete audit of the taxpayer's books and records.
- d. Six months after the due date of the return, an audit of the taxpayer's books and records.

The computation of the additional amount due is shown below:

Tax withheld or paid prior to the due date	\$100.00
Tax shown due on return	80.00
Refund shown on return and made	<u>\$ 20.00</u>
Computed tax from audit	<u>\$ 90.00</u>
Tax shown due on return	80.00
Additional tax due	<u>\$ 10.00</u>
Interest	.48 (6 months interest)
Total due	<u>\$ 10.48</u>

Penalty is not imposed because more than 90 percent of the tax required to be shown due was paid prior to the due date.

Tax withheld paid prior to due date	$\frac{\$100.00}{\$ 90.00} = 111\%$
Tax required to be shown due	

When making this calculation, the total amount of tax withheld or paid prior to the due date should be used exclusive of any applicable refund or credit to a succeeding tax period.

10.41(5) *Computation for tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991.* Iowa Code section 422.25 provides for a penalty of 7.5 percent for the failure to pay at least 90 percent of the tax shown due on or before the due date or for the failure to pay at least 90 percent of the tax required to be shown due on the return by the due date. The penalty is computed on the amount of tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of tax shown to be due on the return.

In considering if penalty should be assessed for failure to pay, it must be determined whether tax payments and credits equal or exceed 90 percent of the tax required to be shown on the return. Tax required to be shown on the return is defined as those taxes required to be computed under Iowa Code section 422.5 (income tax, lump-sum tax, and minimum tax) plus school district surtax less the credits allowed under Iowa Code sections 422.10, 422.11, 422.11A, and 422.12. Tax payments or credits to be applied against the tax required to be shown on the return are (1) Iowa income taxes withheld, (2) Iowa estimate tax payments, (3) out-of-state tax credits, (4) motor vehicle fuel credits, (5) tax payments made prior to filing of the return, and (6) any tax payment made with the return.

Therefore, if an audit results in additional tax which was required to be shown as due on the return by the due date so that less than 90 percent of the tax was paid, the additional tax is subject to penalty for failure to pay. All payments must be first applied to the penalty and then to the interest, and the balance, if any, to the amounts of tax then due.

The penalty for failure to pay at least 90 percent of the tax required to be shown due is not subject to waiver.

In addition to the penalty computed above, there will be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department will bear interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month.

See rule 701—10.5(421) for statutory exceptions to penalty for taxes due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 701—10.8(421) for statutory exceptions to penalty for tax periods due and payable beginning on or after January 1, 1991.

10.41(6) *Examples to illustrate the computation of penalty for tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991.* The following are examples to illustrate the computation of penalty imposed under subrule 10.41(4). For the purpose of these examples only, interest has been computed at the rate of eight-tenths of one percent per month. In addition, for the purpose of these examples, the tax due amounts are assumed to be the total amounts required to be shown due when considering whether the failure to pay penalty should be assessed on the basis that less than 90 percent of the tax was paid.

For additional examples to illustrate the computation of penalty see subrule 10.41(4) except for example “p.” The examples in subrule 10.41(4) show penalty computed at 5 percent, however, penalty for failure to pay taxes due on or after January 1, 1987, but for tax periods ending before January 1, 1991, is 7.5 percent. See subrule 10.6(5) for examples of computation of penalty for tax periods beginning on or after January 1, 1991.

Example (a) — Late Filed Return With Extension, No Remit

- a. Tax due is \$100.
- b. Taxpayer has valid extension through October 31.
- c. Return was filed October 31, with no payment.

The calculation for the total amount due 2 months after the return was filed is shown below:

Tax	\$100.00
Penalty	7.50 (7.5% failure to pay penalty)
Interest	6.40 (8 months interest)
Total due	<u>\$113.90</u>

Penalty is assessed during the period of the extension.

Example (b) — Return Filed During Period of Extension Without Payment of Interest

- a. Tax shown due is \$2,000.
- b. Taxpayer has valid extension through October 31.
- c. \$2,000 paid with the filing of the return on October 31.
- d. Audit is performed 6 months after the filing date.

Tax	\$2,000.00
Penalty	150.00 (7.5% failure to pay penalty)
Interest	96.00 (6 months interest)
Total	<u>\$2,246.00</u>
Less payment	2,000.00
Additional tax due	<u>\$ 246.00</u>
Interest	11.81 (6 months interest)
Total due	<u>\$ 257.81</u>

Failure to pay penalty was assessed because at least 90 percent of the tax required to be shown due was not paid by the due date.

Example (c) — Second Audit of a Return Filed During Period of Extension, Ninety Percent Not Paid by the Due Date, an Amended Return Filed With Payment of Tax and Statutory Interest

- a. Tax shown on return, \$2,000.
- b. Taxpayer has extension through October 31.
- c. Estimated payments made, \$1,500.
- d. \$500 paid with the filing of the return on October 31.
- e. Audit is performed 6 months after the filing date.

Tax	\$2,000.00
Less estimated payments	1,500.00
Tax due	<u>\$ 500.00</u>
Penalty	37.50 (7.5% failure to pay penalty)
Interest	24.00 (6 months interest)
Total due	<u>\$ 561.50</u>
Paid with return	500.00
Additional due	<u>\$ 61.50</u>
Interest	2.95 (6 months interest)
Total due	<u>\$ 64.45</u>

One year after the return was filed, the taxpayer filed an amended return and paid \$200 additional tax and \$28.80 interest.

Six months after the amended return was filed, the amended return was audited and \$100.00 additional tax was found due. Computation of the amount due is as follows:

Tax	\$2,300.00	
Less estimated payments	1,500.00	
Tax due	<u>\$ 800.00</u>	
Penalty	45.00	(7.5% failure to pay penalty on \$600)
Interest	38.40	(6 months interest)
Total due	<u>\$ 883.40</u>	
Paid with return	500.00	
Additional due	<u>\$ 383.40</u>	
Interest	18.40	(6 months interest)
Total due	<u>\$ 401.80</u>	
Paid one year after return was due as a result of audit	64.45	
Additional due	<u>\$ 337.35</u>	
Interest	16.19	(6 months interest)
Total due	<u>\$ 353.54</u>	
Paid with amended return	228.80	
Additional due	<u>\$ 124.74</u>	
Interest	5.99	(6 months interest)
Total due	<u>\$ 130.73</u>	

Penalty is assessed on \$600 because less than 90 percent of the tax required to be shown due was paid by the due date. The \$200 paid with the amended return does not accrue penalty. See subrule 10.5(1).

Example (d) — Audit of Timely Filed Return With Extension

- a. Tax shown due is \$2,900.
 - b. Taxpayer has an extension through October 31.
 - c. \$2,500 in estimated tax paid during the tax year.
 - d. \$300 in estimated tax paid with timely extension request.
 - e. \$100 paid with the filing of the return on August 31.
 - f. Audit completed 6 months after filing date. \$200 in additional tax found due.
- The computation for the total amount is shown below:

Computed tax after audit	\$3,100.00	
Less paid on or before due date	2,800.00	
Additional tax due	<u>\$ 300.00</u>	
Interest	9.60	(4 months interest)
Total due	<u>\$ 309.60</u>	
Less paid with return	100.00	
Balance remaining after payment with return	<u>\$ 209.60</u>	
Interest	10.06	(6 months interest)
Total due	<u>\$ 219.66</u>	

Failure to pay penalty does not accrue because 90 percent of the tax required to be shown due on the return was paid on or before the due date of the return.

Example (e) — Two Audits of a Return Where the First Audit Results in a Refund, and the Second Audit Results in an Assessment

- a. \$250 was paid during the year as estimated tax payments.
- b. Return was filed timely showing \$100 as the computed tax due, \$50 to be credited against the next year's estimated payments and \$100 to be refunded in a warrant to the taxpayer.
- c. Return was audited within 30 days of filing, all information was found to be correct and the \$100 was refunded (without interest).
- d. Eight months after the due date of the original return, taxpayer filed an amended Iowa return, due to an amended federal return, showing \$300 as the computed tax due and paying \$200 with the amended return.
- e. Audit completed 2 months after the filing of the amended return.

The computation for the additional amount due after the filing of the amended return is shown below:

Computed tax from audit	\$300.00
Less estimated tax payment	250.00
Additional tax due	<u>\$ 50.00</u>
Plus amount refunded	100.00
Plus credit to estimated tax	50.00
Plus interest on additional amount due, on amount refunded and on amount credited to estimated tax	12.80 (8 months interest)
Total due when amended return was filed	<u>\$212.80</u>
Less payment with amended return	200.00
Additional tax due	<u>\$ 12.80</u>
Interest	.20 (2 months interest)
Total due	<u>\$ 13.00</u>

Penalty can be imposed only upon the additional tax due after consideration of all timely payments and credits. No penalty due because taxpayer filed an amended return prior to any contact by the department.

This rule is intended to implement Iowa Code sections 421.7 and 422.25.

701—10.42(422) Interest commencing on or after January 1, 1982. See rule 701—10.2(421) regarding the rate of interest charged by the department on delinquent taxes and the rate paid by the department on refunds commencing on or after January 1, 1982.

This rule is intended to implement Iowa Code section 422.7.

701—10.43(422) Request for waiver of penalty. This rule is only applicable to tax that is due on or before December 31, 1984. Any taxpayer who believes good reason exists to object to any penalty imposed by the department for failure to timely file a return may submit a request for waiver seeking that the penalty be waived. If it can be shown to the director's satisfaction that the failure was due to reasonable cause and not due to willful neglect, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer's failure to file a return as required by law.

There must be two showings. The first is that the failure to act was not due to willful neglect, and secondly, the failure to act was due to reasonable cause. A showing that the failure to act was not due to "willful neglect" does not presume that the failure was due to "reasonable cause."

Any taxpayer who believes the taxpayer has good reason to object to any penalty imposed by the department for failure to timely pay may submit a request for waiver seeking that the penalty be waived. If it can be shown to the director's satisfaction that the failure was due to reasonable cause, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer's failure to pay the tax as required by law.

The following are examples of situations that may be accepted by the director as being reasonable cause:

10.43(1) Where the return or payment was filed on time, but filed erroneously with the Internal Revenue Service or another state agency.

10.43(2) A showing that the completed return was mailed in time to reach the department in the normal course of mails, within the legal period. If the due date is a Saturday, Sunday or legal holiday, the following business day is within the legal period.

10.43(3) Where the delay was caused by death or serious illness of the taxpayer responsible for filing.

10.43(4) Where the delay was caused by prolonged unavoidable absence of the taxpayer responsible for filing.

10.43(5) Where the delinquency was caused by the destruction by fire or other casualty of the taxpayer's records.

10.43(6) A showing that the delay or failure was due to erroneous information given the taxpayer by an employee of the department.

Where the taxpayer fails to remit the tax due with the filing of the return on or before the due date, penalty will be imposed on the unpaid balance unless it can be shown that reasonable cause for such failure existed.

10.43(7) If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that ordinary business care and prudence were exercised in providing for payment of the tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if the taxpayer paid on the due date. What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, *Armstrong's Inc. v. Iowa Department of Revenue*, 320 N.W.2d 623 (Iowa 1982).

This rule is intended to implement Iowa Code sections 422.25 and 422.58.

701—10.44 to 10.49 Reserved.

WITHHOLDING
[Prior to 1/23/91, see 701—46.5(422)]

701—10.50(422) Penalty and interest.

10.50(1) *For tax due before January 1, 1985.* See rule 10.41(422) and subrules 10.41(1) and 10.41(2) for application and computation of penalty and interest on withholding taxes.

10.50(2) *For tax due on or after January 1, 1985, but before January 1, 1987.* Iowa Code section 422.16 provides for a penalty of 10 percent for the failure to pay at least 90 percent of the tax shown due on or before the due date or for the failure to pay at least 90 percent of the tax required to be shown due on the return by the due date. The penalty is computed on the amount of tax remaining unpaid that is required to be shown due on the return as distinguished from the amount of tax shown to be due on the return.

The penalty for failure to pay at least 90 percent of the tax required to be shown due is not subject to waiver.

For examples on application of penalties, refer to subrule 10.41(4). The penalty assessed in these examples is 5 percent, where for withholding tax, the penalty is 10 percent for failure to pay at least 90 percent of the tax shown due on or before the due date or for failure to pay at least 90 percent of the tax required to be shown due on the return by the due date.

10.50(3) *For tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991.* Iowa Code section 422.16 provides for a penalty of 15 percent for the failure to pay at least 90 percent of the tax shown due on or before the due date or for the failure to pay at least 90 percent of the tax required to be shown due on the return by the due date. The penalty is computed on the amount of tax remaining unpaid that is required to be shown due on the return as distinguished from the amount of tax shown to be due on the return.

The penalty for failure to pay at least 90 percent of the tax required to be shown due is not subject to waiver.

For examples on application of penalties, refer to subrule 10.41(6). The penalty assessed in these examples is 7.5 percent, where for withholding tax, the penalty is 15 percent for failure to pay at least 90 percent of the tax shown due on or before the due date or for failure to pay at least 90 percent of the tax required to be shown due on the return by the due date.

See rule 701—10.5(421) for statutory exceptions to penalty for taxes due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 701—10.8(421) for statutory exceptions to penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code section 422.16.

701—10.51 to 10.55 Reserved.

CORPORATE
[Prior to 1/23/91, see subrule 701—52.5(3) and rule 701—52.10(422)]

701—10.56(422) Penalty and interest. In computing penalty and interest for failure to file a timely return or to pay the minimum tax, refer to subrules 10.57(1) and 10.57(2). Effective for tax years beginning on or after January 1, 1986, estimate payments are required for minimum tax.

701—10.57(422) Penalty and interest.

10.57(1) *Computation for tax payments due on or after January 1, 1981, but before January 1, 1982.* The filing of the return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed, unless it is shown that such failure was due to reasonable cause.

A penalty of 5 percent per month, not to exceed 25 percent in the aggregate, is imposed for failure to file a return or pay the tax due. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition for failure to pay, if after the return is filed, there is a continued failure to pay the tax due during the five-month period after the tax was due (taking into consideration any extensions of time to file the return). The combined penalties for failure to file or pay shall not exceed 25 percent of the tax due. For purposes of computing the penalty in case of failure to file a return or failure to pay the tax required to be paid with the filing of the return, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return. If a return is determined to be delinquent, then the penalty shall continue to be assessed on any additional amounts of tax determined to be due. The percent of penalty applied to additional amounts of tax determined to be due shall be limited to the percentage which had accrued when the initial penalty was assessed and paid.

All payments shall be first applied to the penalty and then the interest, and the balance, if any, to the amount of tax then due, in the order specified.

A return filed within the period of an extension granted will not be considered delinquent.

In addition to the penalty computed above there shall be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment and the refund, considering each fraction of a month as an entire month.

10.57(2) *Computation for tax due on or after January 1, 1982, but before January 1, 1985.* The filing of the return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed unless it is shown that such failure was due to reasonable cause.

Section 422.25 provides a penalty of 5 percent per month, not to exceed 25 percent in the aggregate, for the failure to file a return or for the failure to pay at least 90 percent of tax required to be shown due. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay, if after the return is filed, there is a continued failure to pay at least 90 percent of the tax during the five-month period after the tax was due (taking into consideration any extensions of time to file a return). The combined penalties for failure to file or pay shall not exceed 25 percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return.

In considering if penalty should be assessed for failure to pay, it must be determined whether tax payments and credits equal or exceed 90 percent of the tax required to be shown on the return. Tax required to be shown on the return is defined as those taxes required to be computed under division III of Iowa Code chapter 422 (income tax and minimum tax). Tax payments or credits to be applied against the tax required to be shown on the return are (1) Iowa estimate tax payments, (2) motor vehicle fuel tax credits, (3) tax payments made prior to the filing of the return, and (4) any tax payment made with the return.

Therefore, if an audit results in additional tax which was required to be shown as due on the return by the due date (taking into consideration any extension of time to file a return), so that less than 90 percent of the tax was paid, the additional tax is subject to penalty for failure to pay, unless the failure was due to reasonable cause. All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amounts of tax then due in the order specified.

In addition to the penalty computed above, there shall be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

For examples on application of penalties, refer to subrule 10.41(2).

10.57(3) *Computation for tax due on or after January 1, 1985, but before January 1, 1987.* Iowa Code section 422.25 provides for a penalty of 5 percent for the failure to pay at least 90 percent of the tax shown due on or before the due date or for the failure to pay at least 90 percent of the tax required to be shown due on the return by the due date. The penalty is computed on the amount of tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of tax shown to be due on the return.

In considering if penalty should be assessed for failure to pay, it must be determined whether tax payments and credits equal or exceed 90 percent of the tax required to be shown on the return. Tax required to be shown on the return is defined as those taxes required to be computed under Iowa Code chapter 422, division III (income tax and minimum tax). Tax payments or credits to be applied against the tax required to be shown on the return are (1) Iowa estimate tax payments, (2) motor vehicle fuel tax credits, (3) tax payments made prior to the filing of the return, (4) any tax payment made with the return, and (5) credits allowed under Iowa Code section 422.33.

Therefore, if an audit results in additional tax which was required to be shown as due on the return by the due date (taking into consideration any extension of time to file a return), so that less than 90 percent of the tax was paid, the additional tax is subject to penalty for failure to pay. All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amounts of tax then due in the order specified.

The penalty for failure to pay at least 90 percent of the tax required to be shown due is not subject to waiver.

In addition to the penalty computed above, there shall be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

For examples on application of penalties, refer to subrule 10.41(4).

10.57(4) *Computation for tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991.* Iowa Code section 422.25 provides for a penalty of 7.5 percent for the failure to pay at least 90 percent of the tax shown due on or before the due date or for the failure to pay at least 90 percent of the tax required to be shown due on the return by the due date. The penalty is computed on the amount of tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of tax shown to be due on the return.

In considering if penalty should be assessed for failure to pay, it must be determined whether tax payments and credits equal or exceed 90 percent of the tax required to be shown on the return. Tax required to be shown on the return is defined as those taxes required to be computed under Iowa Code chapter 422, division III (income tax and minimum tax). Tax payments or credits to be applied against the tax required to be shown on the return are (1) Iowa estimate tax payments, (2) motor vehicle fuel tax credits, (3) tax payments made prior to the filing of the return, (4) any tax payment made with the return, and (5) credits allowed under Iowa Code section 422.33.

Therefore, if an audit results in additional tax which was required to be shown as due on the return by the due date so that less than 90 percent of the tax was paid, the additional tax is subject to penalty for failure to pay. All payments must be first applied to the penalty and then to the interest, and the balance, if any, to the amounts of tax then due.

The penalty for failure to pay at least 90 percent of the tax required to be shown due is not subject to waiver.

In addition to the penalty computed above, there will be added interest as provided by law from the original due date of the return. Any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department will bear interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

For examples on application of penalties for tax periods ending before January 1, 1991, refer to subrule 10.41(6). See subrule 10.6(5) for examples on application of penalties for tax periods beginning on or after January 1, 1991.

See rule 701—10.5(421) for statutory exceptions to penalty for taxes due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 701—10.8(421) for statutory exceptions to penalty for tax periods beginning on or after January 1, 1991.

10.57(5) *Request for waiver of penalty.* This subrule is only applicable to tax that is due on or before December 31, 1984. Any taxpayer who believes the taxpayer has good reason to object to any penalty imposed by the department for failure to timely file a return may submit a request for waiver seeking that the penalty be waived. If it can be shown to the director's satisfaction that the failure was due to reasonable cause and not due to willful neglect, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for taxpayer's failure to file a return as required by law.

There must be two showings. The first is that the failure to act was not due to willful neglect, and secondly, the failure was due to reasonable cause. A showing that the failure to act was not due to "willful neglect" does not presume that the failure was due to "reasonable cause."

Any taxpayer who believes the taxpayer has good reason to object to any penalty imposed by the department for failure to timely pay may submit a request for waiver seeking that the penalty be waived. If it can be shown to the director's satisfaction that the failure was due to reasonable cause, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer's failure to pay the tax as required by law.

The following are examples of situations that may be accepted by the director as being reasonable cause:

- a. Where the return or payment was filed on time, but filed erroneously with the Internal Revenue Service or another state agency.
- b. A showing that the completed return was mailed in time to reach the department in the normal course of mails, within the legal period. If the due date is a Saturday, Sunday, or legal holiday, the following business day is within the legal period.
- c. Where the delay was caused by death or serious illness of the officer responsible for filing.
- d. Where the delay was caused by prolonged unavoidable absence of the officer responsible for filing.
- e. Where the delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.
- f. A showing that the delay or failure was due to erroneous information given the taxpayer by an employee of the department.
- g. A waiver of penalty will generally apply where a taxpayer has timely filed a return under the provisions of Internal Revenue regulation 1.1502-76(c).
- h. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that ordinary business care and prudence were exercised in providing for payment of the tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if the taxpayer paid on the due date. What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, *Armstrong's Inc. v. Iowa Department of Revenue*, 320 N.W.2d 623 (Iowa 1982).

This rule is intended to implement Iowa Code section 422.25.

701—10.58(422) Waiver of penalty and interest. Taxpayers who are affected by the change in taxation of intangibles and were unable to timely file a correct corporation income tax return for a tax year beginning on or after January 1, 1995, and before December 31, 1995, because the department had not provided guidance in the form of rules, will not be subject to penalty for failure to pay the tax due until four months after the April 3, 1996, effective date of ARC 6269A published in the Iowa Administrative Bulletin, Volume XVIII, Number 28, February 28, 1996, or the normal due date considering any extension of time to file, whichever is the later. Interest will not be due on the amount of tax due because of the change in the taxation of intangible income until August 3, 1996. See 1968 Op. Att'y Gen. 416.

This rule is intended to implement Iowa Code section 422.33(1).

701—10.59 to 10.65 Reserved.

FINANCIAL INSTITUTIONS
[Prior to 1/23/91, see 701—58.6(422)]

701—10.66(422) Penalty and interest.

10.66(1) *Computation for tax payments due on or after January 1, 1981, but before January 1, 1982.* The filing of the return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed, unless it is shown that such failure was due to reasonable cause.

A penalty of 5 percent per month, not to exceed 25 percent in the aggregate, is imposed for failure to file a return or pay the tax due. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition for failure to pay, if after the return is filed, there is a continued failure to pay the tax due during the five-month period after the tax was due (taking into consideration any extensions of time to file a return). The combined penalties for failure to file or pay shall not exceed 25 percent of the tax due. For purposes of computing the penalty in case of failure to file a return or failure to pay the tax required to be paid with the filing of the return, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return. If a return is determined to be delinquent, then the penalty shall continue to be assessed on any additional amounts of tax determined to be due. The percent of penalty applied to additional amounts of tax determined to be due shall be limited to the percentage which had accrued when the initial penalty was assessed and paid.

All payments shall be first applied to the penalty and then the interest, and the balance, if any, to the amount of tax then due, in the order specified.

A return filed within the period of an extension granted will not be considered delinquent.

In addition to the penalty computed above there shall be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment and the refund, considering each fraction of a month as an entire month.

10.66(2) *Computation for tax due on or after January 1, 1982, but before January 1, 1985.* The filing of the return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed unless it is shown that such failure was due to reasonable cause.

Section 422.25 provides a penalty of 5 percent per month, not to exceed 25 percent in the aggregate, for the failure to file a return or for the failure to pay at least 90 percent of tax required to be shown due. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay, if after the return is filed, there is a continued failure to pay at least 90 percent of the tax during the five-month period after the tax was due (taking into consideration any extensions of time to file a return). The combined penalties for failure to file or pay shall not exceed 25 percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return.

In considering if penalty should be assessed for failure to pay, it must be determined whether tax payments and credits equal or exceed 90 percent of the tax required to be shown on the return. Tax required to be shown on the return is defined as those taxes required to be computed under division V of Iowa Code chapter 422 (franchise tax and minimum tax). Tax payments or credits to be applied against the tax required to be shown on the return are (1) Iowa estimate tax payments, (2) tax payments made prior to the filing of the return, and (3) any tax payment made with the return.

Therefore, if an audit results in additional tax which was required to be shown as due on the return by the due date (taking into consideration any extension of time to file a return), so that less than 90 percent of the tax was paid, the additional tax is subject to penalty for failure to pay, unless the failure was due to reasonable cause. All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amounts of tax then due in the order specified.

In addition to the penalty computed above, there shall be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

For examples on application of penalties, refer to subrule 10.41(2).

10.66(3) *Computation for tax due on or after January 1, 1985, but before January 1, 1987.* Iowa Code section 422.25 provides for a penalty of 5 percent for the failure to pay at least 90 percent of the tax shown due on or before the due date or for the failure to pay at least 90 percent of the tax required to be shown due on the return by the due date. The penalty is computed on the amount of tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of tax shown to be due on the return.

In considering if penalty should be assessed for failure to pay, it must be determined whether tax payments and credits equal or exceed 90 percent of the tax required to be shown on the return. Tax required to be shown on the return is defined as those taxes required to be computed under Iowa Code chapter 422, division V (franchise tax and minimum tax). Tax payments or credits to be applied against the tax required to be shown on the return are (1) Iowa estimate tax payments, (2) tax payments made prior to the filing of the return, and (3) any tax payment made with the return.

Therefore, if an audit results in additional tax which was required to be shown as due on the return by the due date (taking into consideration any extension of time to file a return), so that less than 90 percent of the tax was paid, the additional tax is subject to penalty for failure to pay. All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amounts of tax then due to the order specified.

The penalty for failure to pay at least 90 percent of the tax required to be shown due is not subject to waiver.

In addition to the penalty computed above, there shall be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

For examples on application of penalties, refer to subrule 10.41(4).

10.66(4) *Computation for tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991.* Iowa Code section 422.25 provides for a penalty of 7.5 percent for the failure to pay at least 90 percent of the tax shown due on or before the due date or for the failure to pay at least 90 percent of the tax required to be shown due on the return by the due date. The penalty is computed on the amount of tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of tax shown to be due on the return.

In considering if penalty should be assessed for failure to pay, it must be determined whether tax payments and credits equal or exceed 90 percent of the tax required to be shown on the return. Tax required to be shown on the return is defined as those taxes required to be computed under Iowa Code chapter 422, division V (franchise tax and minimum tax). Tax payments or credits to be applied against the tax required to be shown on the return are (1) Iowa estimate tax payments, (2) tax payments made prior to the filing of the return, and (3) any tax payment made with the return.

Therefore, if an audit results in additional tax which was required to be shown as due on the return by the due date so that less than 90 percent of the tax was paid, the additional tax is subject to penalty for failure to pay. All payments must be first applied to the penalty and then to the interest, and the balance, if any, to the amounts of tax then due.

The penalty for failure to pay at least 90 percent of the tax required to be shown due is not subject to waiver.

In addition to the penalty computed above, there will be added interest as provided by law from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department will bear interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

For examples on application of penalties, refer to subrule 10.41(6).

See rule 701—10.5(421) for statutory exceptions to penalty for taxes due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 701—10.8(421) for statutory exceptions to penalty for tax periods beginning on or after January 1, 1991.

10.66(5) *Request for waiver of penalty.* This subrule is only applicable to tax that is due on or before December 31, 1984. Any taxpayer who believes he has good reason to object to any penalty imposed by the department for failure to timely file a return may submit a request for waiver seeking that the penalty be waived. If it can be shown to the director's satisfaction that the failure was due to reasonable cause and not due to willful neglect, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer's failure to file a return as required by law.

There must be two showings. The first is that the failure to act was not due to willful neglect, and secondly, the failure was due to reasonable cause. A showing that the failure to act was not due to "willful neglect" does not presume that the failure was due to "reasonable cause."

Any taxpayer who believes he has good reason to object to any penalty imposed by the department for failure to timely pay may submit a request for waiver seeking that the penalty be waived. If it can be shown to the director's satisfaction that the failure was due to reasonable cause, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer's failure to pay the tax as required by law.

The following are examples of situations that may be accepted by the director as being reasonable cause:

- a. Where the return or payment was filed on time, but filed erroneously with the Internal Revenue Service or another state agency.
- b. A showing that the completed return was mailed in time to reach the department in normal course of mails, within the legal period. If the delinquency date is a Saturday, Sunday, or legal holiday, the following business day is within the legal period.
- c. Where the delay was caused by death or serious illness of the officer responsible for filing.
- d. Where the delay was caused by prolonged unavoidable absence of the officer responsible for filing.
- e. Where the delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.
- f. A showing that the delay or failure was due to erroneous information given the taxpayer by an employee of the department.
- g. A waiver of penalty will generally apply where a taxpayer has timely filed a return under the provisions of Internal Revenue regulation 1.1502-76(c).
- h. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that ordinary business care and prudence were exercised in providing for payment of the tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if the taxpayer paid on the due date. What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, *Armstrong's Inc. v. Iowa Department of Revenue*, 320 N.W.2d 623 (Iowa 1982).

This rule is intended to implement Iowa Code sections 422.25 and 422.66.

701—10.67 to 10.70 Reserved.

MOTOR FUEL

[Prior to 1/23/91, see 701—63.8(324) and 63.10(324)]

701—10.71(421) Penalty and enforcement provisions.

10.71(1) *Illegal use of dyed fuel.* The illegal use of dyed fuel in the supply tank of a motor vehicle shall result in a civil penalty assessed against the owner or operator of the motor vehicle as follows:

- a. A \$200 fine for the first violation.
- b. A \$500 fine for a second violation within three years of the first violation.
- c. A \$1,000 fine for third and subsequent violations within three years of the first violation.

10.71(2) *Illegal importation of untaxed fuel.* A person who illegally imports motor fuel or undyed special fuel without a valid importer's license or supplier's license shall be assessed a civil penalty as stated below. However, the owner or operator of the importing vehicle shall not be guilty of violating the illegal import provision if it is shown by the owner or operator that the owner or operator reasonably did not know or reasonably should not have known of the illegal importation.

a. For a first violation, the importing vehicle shall be detained and a fine of \$2,000 shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable for payment of the fine.

b. For a second violation, the importing vehicle shall be detained and a fine of \$5,000 shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the fine.

c. For third and subsequent violations, the importing vehicle and the fuel shall be seized and a fine of \$10,000 shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the fine.

d. If the owner or operator of the importing vehicle or the owner of the fuel fails to pay the tax and fine for a first or second offense, the importing vehicle and the fuel may be seized. The Iowa department of revenue and finance, the Iowa department of transportation, or any peace officer, at the request of either department, may seize the vehicle and the fuel.

e. If the operator or owner of the importing vehicle or the owner of the fuel moves the vehicle or the fuel after the vehicle has been detained and a sticker has been placed on the vehicle stating that "this vehicle cannot be moved until the tax, penalty, and interest have been paid to the department of revenue and finance," an additional penalty of \$5,000 shall be assessed against the operator or owner of the importing vehicle or the owner of the fuel.

10.71(3) *Improper receipt of fuel credit or refund.* If a person files an incorrect refund claim, in addition to the amount of the excess claim, a penalty of 10 percent shall be added to the amount by which the amount claimed and refunded exceeds the amount actually due and shall be paid to the department. If a person knowingly files a fraudulent refund claim with the intent to evade the tax, the penalty shall be 75 percent in lieu of the 10 percent. The person shall also pay interest on the excess refunded at the rate per month specified in Iowa Code section 421.7, counting each fraction of a month as an entire month, computed from the date the refund was issued to the date the excess refund is repaid to the state.

10.71(4) *Illegal heating of fuel.* The deliberate heating of taxable motor fuel or special fuel by dealers prior to consumer sale is a simple misdemeanor.

10.71(5) *Prevention of inspection.* The Iowa department of revenue and finance or the Iowa department of transportation may conduct inspections for coloration, markers, and shipping papers at any place where taxable fuel is or may be loaded into transport vehicles, produced, or stored. Any attempts by a person to prevent, stop, or delay an inspection of fuel or shipping papers by authorized personnel shall be subject to a civil penalty of not more than \$1,000 per occurrence. Any law enforcement officer requested by the Iowa department of revenue and finance or Iowa department of transportation may physically inspect, examine, or otherwise search any tank, fuel supply tank of a vehicle, reservoir, or other container that can or may be used for the production, storage, or transportation of any type of fuel.

10.71(6) *Failure to conspicuously label a fuel pump.* A retailer who does not conspicuously label a pump or other delivery facility as required by the Internal Revenue Service, that dispenses dyed diesel fuel so as to notify customers that it contains dyed fuel, shall pay to the department of revenue and finance a penalty of \$100 per occurrence.

10.71(7) *False or fraudulent return.* Any person, including an officer of a corporation or a manager of a limited liability company, who is required to make, render, sign, or verify any report or return required by this chapter and who makes a false or fraudulent report, or who fails to file a report or return with the intent to evade the tax, shall be guilty of a fraudulent practice. Any person who aids, abets, or assists another person in making any false or fraudulent return or false statement in any return with the intent to evade payment of tax shall be guilty of a fraudulent practice.

This rule is intended to implement 1995 Iowa Acts, chapter 155, section 36.

701—10.72(452A) Interest. Interest at the rate of three-fourths of one percent per month, based on the tax due, shall be assessed against the taxpayer for each month such tax remains unpaid prior to January 1, 1982. The interest shall accrue from the date the return was required to be filed. Interest shall not apply to penalty. Each fraction of a month shall be considered a full month for the computation of interest. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

Refunds on reports or returns filed on or after July 1, 1986, but before July 1, 1997, will accrue interest beginning on the first day of the third calendar month following the date of payment or the date the return was filed or due to be filed, whichever is later, at the rate in effect under Iowa Code section 421.7, counting each fraction of a month as an entire month. Refunds on reports or returns filed on or after July 1, 1997, will accrue interest beginning on the first day of the second calendar month following the date of payment or the date the return was filed or due to be filed, whichever is later. Claims for refund filed under Iowa Code sections 452A.17 and 452A.21 will accrue interest beginning with the first day of the second calendar month following the date the refund claim is received by the department. See rule 10.3(422,450,452A).

This rule is intended to implement Iowa Code section 452A.65 as amended by 1997 Iowa Acts, House File 266.

701—10.73 to 10.75 Reserved.

CIGARETTES AND TOBACCO

[Prior to 1/23/91, see 701—81.8(98), 81.9(98), and 81.15(98)]

701—10.76(453A) Penalties.

10.76(1) Cigarettes. The following is a list of offenses which subject the violator to a penalty:

1. The failure of a permit holder to maintain proper records;
2. The sale of taxable cigarettes without a permit;
3. The filing of a late, false or incomplete report with the intent to evade tax by a cigarette distributor, distributing agent or wholesaler;
4. Acting as a distributing agent without a valid permit; and
5. A violation of any provision of Iowa Code chapter 453A or these rules.

Penalties for these offenses are as follows:

- A \$200 penalty for the first violation.
- A \$500 penalty for a second violation within two years of the first violation.
- A \$1,000 penalty for a third or subsequent violation within two years of the first violation.

Penalties for possession of unstamped cigarettes are as follows:

- A \$200 penalty for the first violation if a person is in possession of more than 40 but not more than 400 unstamped cigarettes.
- A \$500 penalty for the first violation if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes.
- A \$1,000 penalty for the first violation if a person is in possession of more than 2,000 unstamped cigarettes.
- For a second violation within two years of the first violation, the penalty is \$400 if a person is in possession of more than 40 but not more than 400 unstamped cigarettes; \$1,000 if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes; and \$2,000 if a person is in possession of more than 2,000 unstamped cigarettes.
- For a third or subsequent violation within two years of the first violation, the penalty is \$600 if a person is in possession of more than 40 but not more than 400 unstamped cigarettes; \$1,500 if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes; and \$3,000 if a person is in possession of more than 2,000 unstamped cigarettes.

a. Rescinded IAB 1/23/91.

b. *For tax due on or after January 1, 1985.* If, upon audit, it is determined that any person has failed to pay at least 90 percent of the tax imposed by Iowa Code chapter 453A, division I, which failure was not the result of a violation enumerated above, a penalty of 5 percent of the tax deficiency shall be imposed. This penalty is not subject to waiver for reasonable cause.

c. *For tax due on or after January 1, 1987.* If, upon audit, it is determined that any person has failed to pay at least 90 percent of the tax imposed by Iowa Code chapter 453A, division I, which failure was not the result of a violation enumerated above, a penalty of 7.5 percent of the tax deficiency is imposed. This penalty is not subject to waiver.

See rule 701—10.5(421) for statutory exceptions to penalty for taxes due and payable on or after January 1, 1987. See rule 701—10.8(421) for statutory exceptions to penalty for tax periods beginning on or after January 1, 1991.

10.76(2) Tobacco.

a. Rescinded IAB 1/23/91.

b. *For tax due on or after January 1, 1985, but before January 1, 1987.*

(1) *Deficient return—payment.* If a return is filed and it is determined to be deficient as to reporting tax due or remitting the tax due, the department shall issue a proposed assessment or billing including a proposed penalty. If the taxpayer pays the proposed assessment or appeals the decision, as per rule 701—81.11(453A) within 20 days, the penalty shall not accrue. A final assessment is issued at the termination of the appeals process or if the taxpayer does not appeal and does not pay the proposed assessment within 20 days. The penalty attaches and becomes effective upon issuance of the final assessment. The penalty upon final assessment is 5 percent of the unpaid tax if less than 90 percent of the tax has been paid by the due date. If the deficiency was the result of a false or fraudulent return made with the intent to evade the tax, the penalty shall be 50 percent of the tax required to be shown due.

(2) *Failure to file a return.* If any person fails to file a tax return required by Iowa Code chapter 453A, division II, or these rules, the director shall make written demand upon said person to file the return. If the return is not filed within 20 days, the director shall assess the tax due based upon an estimated return and included therein shall be a penalty of 50 percent of the unpaid tax. If the return is filed within the 20-day period, the penalty does not accrue.

The penalty imposed under subrule 10.76(2), paragraph “b,” is not subject to waiver for reasonable cause.

c. *For tax due on or after January 1, 1987.* If it is determined that any person has failed to pay at least 90 percent of the tax imposed by Iowa Code chapter 453A, division II, which failure was not the result of an intent to evade the tax, a penalty of 7.5 percent of the tax deficiency is imposed. This penalty is not subject to waiver.

See rule 701—10.5(421) for statutory exceptions to penalty for tax due and payable on or after January 1, 1987. See rule 701—10.8(421) for statutory exceptions to penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code sections 453A.28, 453A.31 and 453A.46 as amended by 1999 Iowa Acts, chapter 151.

701—10.77(453A) Interest.

10.77(1) *For tax due on or after January 1, 1985, but before January 1, 1991.*

a. Cigarettes. There shall be assessed interest at the rate established by rule 701—10.2(421) from the due date of the tax to the date of payment counting each fraction of a month as an entire month. For the purpose of computing the due date of any unpaid tax, a FIFO inventory method shall be used for cigarettes and stamps. See subrule 10.41(4) for examples of penalty and interest.

b. Tobacco. The interest rate on delinquent tobacco tax is the rate established by rule 701—10.2(421) counting each fraction of a month as an entire month. If an assessment for taxes due is not allocated to any given month, the interest shall accrue from the date of assessment. See subrule 10.41(4) for examples of penalty and interest.

10.77(2) Reserved.

This rule is intended to implement Iowa Code sections 453A.28 and 453A.46.

701—10.78(453A) Waiver of penalty or interest. For tax due on or after January 1, 1985, but for tax periods ending before January 1, 1991.

10.78(1) *Cigarettes.* The director has the power to waive or reduce the penalty imposed by Iowa Code section 453A.31 if a violation of that statute is due to reasonable cause. See rule 10.79(453A). The penalty imposed by Iowa Code section 453A.28 is not subject to waiver for reasonable cause.